CR APPS 4,5,6,7,8,9,10,11,12,13&14/2005

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

LANCE COPRORAL DANIEL SANDI & 10 OTHERS - APPELLANTS

AND

THE STATE - RESPONDENT

C.A. OSHO-WILLIAMS (now deceased) and C.C.V.TAYLOR Esq for the Appellants

S.A. BAH Esq for the Respondent

JUDGMENT

1. This is an appeal brought by the 11 Appellants herein against their respective convictions and sentences, for the offences of Treason and Misprision of Treason by the High Court. On 20th December,2004 the High Court of Sierra Leone, RASCHID,J (now deceased) Presiding with a Jury, convicted the 1st to the 10th Appellants on a three Count Indictment: two Counts for the offence of Treason contrary to Section 3(1)(a) and (b) respectively of the Treason and State Offences Act,1963 as amended, and the 11th Appellant on one Count for the offence of Misprision of Treason. The 1st to 10th Appellants were sentenced to death by hanging on both Counts; and the 11th Appellant was sentenced to a term of Imprisonment of 10 years.
2. By Notices of Appeal dated 10th January,2005 the 1st, 2nd, 3rd, 5th and 6th and 11th Appellants appealed against their respective convictions and sentences. By Notices of Appeal dated 7th January,2005 the 4th, 7th, 8th, 9th, and 10th Appellants, appealed against their respective convictions and sentences.
3. The Treason charges in Counts 1 and 2 of the Indictment state that the Appellants, and other persons, three of whom were acquitted at the trial, prepared, by conspiring together to overthrow the Government of Sierra Leone by unlawful means, in that they agreed to overthrow and take over the Government by unlawful means; and to suspend the Constitution of Sierra Leone by means other than that provided by Law. It was alleged also, that these same persons endeavoured to overthrow the Government

by unlawful means, in that they agreed to over throw and take over the Government by unlawful means; to suspend the Constitution by means other than that provided by law; and to overthrow the Government by unlawful means, by carrying out and participated in an armed attack at the Army Engineers' Regiment at Wellington, Freetown. The convoluted and tautologous manner in which the Indictment was drafted, shows that the prosecution was in trouble from the word "go." Thus, for example, the Indictment alleges that the Appellants prepared to overthrow the Government by unlawful means, by conspiring to do so, and by agreeing to do so.

4. Count 3 of the Indictment, charges the 11th Appellant alone with the offence of Misprision of Treason. Misprision of Treason is the offence of concealing the commission of an act of Treason.
5. 40 witnesses were called for the prosecution, none for the defence. The exhibits tendered, were lettered "A" to "DDDD." The trial would have commenced on 23 April,2003, but for non-compliance with the Orders of the Court for service of copies of the Indictment, and the proofs of evidence on the Appellants. B V S KEBBIE Esq, DPP appeared for the prosecution together with A K A BARBER Esq, O V ROBBIN-MASON Esq, S A BAH Esq, MS C C JARRETT, and J E O KEBBIE Esq. For the defence were the late C A OSHO-WILLIAMS and S M SESAY Esq. The matter was thus adjourned to 1 May,2003 when the Court was informed by ~~the~~ by MR ROBBIN-MASON the current Acting DPP, that the Chief Justice had appointed a Special Session for the trial of the Appellants pursuant to Rule 5(1) of the High Court (Criminal Sessions) Rules,1965, and that Notice of the Appointment had been published in the Gazette. On the next adjourned date, 9 May,2003 amendments were made to the Indictment after which the charges were read out to the Appellants and their co-accused. All of them pleaded Not Guilty to the charges. A jury was empanelled between that date, and 15th May,2003. On 19 May,2003 the then AG&MJ opened the case for the prosecution, and began leading evidence.
6. During the course of the trial, the jury was reduced below 12, and the prosecution and the Appellants gave their respective consents to the trial proceeding with 11 jurors. The prosecution closed its case on 15th June,2004. On 23rd June,2004 the accused persons were put to their election. All the Appellants, save the 5th Appellant, chose to rely on their

statements to the Police. He had first elected to testify on oath. Later, on 29 June,2004 the 5th Appellant changed his option, and informed the Court he was relying on his statement to the Police. The DPP addressed the Court between 13 July,2004 and 24 August,2004. The late MR OSHO-WILLIAMS addressed the Court on behalf of the 1st, 2nd,3rd,6th,7th,8th,9th,10th,11th and 16th accused persons, beginning 25 August,2004 and ending on 12 October,2004. S M SESAY Esq addressed on behalf of the 4th,12th,13th,14th and 15th accused persons between 13 October, 2004 and 11 November,2004; and A KOROMA esq for the 5th accused between 16th and 17th November,2004. Summing-up should have commenced on 22 November,2004 but due to the absence of jurors, did not actually commence until 7th or 9th December,2004 and ended on 20 December,2004 when the jury delivered the verdicts set out above.

7. I have narrated the course of the trial so as to give some perspective to the immense task the Trial Judge faced. The trial spanned a period of nearly 20 months. There were long breaks in between due to the absence of Counsel, the jurors, witnesses or likely witnesses, and electricity. Even the Summing-Up it seems ended abruptly at page 394 of the Record. Though it is clear there must have been several adjournments during the Summing-Up, none of this has been recorded by the LTJ. We do not know at what stage he invited the jury to retire to consider their verdicts. All we have are his minute at page 395 recording the verdicts of the jury. We do not know whether the jury took time to consider their verdicts, and the length of time this consideration took; nor do we know whether they were sequestered after the end of the Summing-Up until the verdicts were delivered. All of these procedures have to be recorded by the LTJ as evidence that the trial has been conducted in accordance with the Criminal Procedure Act,1965. The lack of evidence that there had been due compliance with that Act would of itself have compelled us to set aside the convictions as being unsafe and unsatisfactory.
8. Given the spasmodic manner in which the trial was conducted, mistakes were bound to be made by the LTJ. The LTJ had himself been an experienced Prosecutor before transferring, first, to the Magisterial Bench in 1986, before his elevation in late 1992 to the High Court Bench. But the task he faced was enormous and taxing to his failing health, and may have been, in my estimation, not unconnected with his sudden demise nearly two years later. This explains in some measure why the complaints

made by the Appellants are supported by the Record before us, and why MR BAH for the Respondent, conceded the grounds argued, and we have decided to allow the appeals

9. We allowed the Appellants to file and to argue additional grounds of appeal. Filing was done on 24 April,2008 and arguments were heard from both sides on 30 April,2008 on which date Judgment was reserved. The late OSHO-WILLIAMS Esq began by abandoning his original grounds of appeal, and sought our leave to argue the fresh grounds filed on 24 April,2008. The two main complaints which run through all of the appeals are that the trial Judge failed to analyse the evidence led by the prosecution and to relate the same to the law; and that the LTJ failed to direct the jury adequately on the law relating to accomplices, and to the danger of convicting on the uncorroborated evidence of an accomplice. Other grounds canvassed, were that the LTJ failed to direct the jury on the issue of alibi raised by the 2nd Appellant, and that the verdicts were against the weight of the evidence. We hold the view that the complaints relating to the directions on the evidence of accomplices, and on the issue of alibi evidence, are justified.
10. It is well established in our jurisprudence, (now abrogated in the UK by Section 32 of the Criminal Justice and Public Order Act,1994) that where the guilt or otherwise of an accused person depends on the evidence of an accomplice, it is the duty of the Trial Judge to warn the jury that though may convict the accused person on such evidence, it is dangerous to do so unless it is corroborated. He should explain what corroboration means in law, and should indicate the type of evidence which could amount to corroboration. It is for the jury to decide whether such evidence amounts to corroboration or not. Failure to give such warning will result in a conviction being quashed irrespective of whether there was corroborative evidence or not. The duty of the trial Judge is spelt out at page 155 in the Judgment of AMES,P in the Court of Appeal in **SABRAH v R**[1964-66] ALR SL 154. The duty of a trial Magistrate to do so was also emphasised in **THOMAS v R** [1957-60] ALR SL 187 at 190 LL26-35. The point was also taken by the Court of Appeal in **KHAZALI v THE STATE** [1974-82] SLBALR 5 at pages 15-17. All of these cases restate the position of English Law as expounded by the Court of Criminal Appeal in **BASKERVILLE (1916)** 12 Cr App Rep 81. See also the case of **JALLOH v R [1964-6]** ALR SL 20 C.A. at page 22. It follows therefore,

that if the Trial Judge failed to give this direction, the convictions cannot stand. Let us therefore examine what the LTJ actually said to the jury on this all important issue. We have gone through the whole of the Summing-Up recorded in pages 333-395 of the Record. We do not find any mention of the term accomplice, though it is clear from the evidence that at least PW1, 11, 14 and 17 were accomplices (PW11 later became an informant). They had taken part in the meetings at Devil Hole and elsewhere, and/or in the attack at Wellington. They were therefore accomplices in fact as well as in Law. A corroboration warning was certainly required in respect of their evidence. Regrettably, none was given. The omission is an error this Court cannot, on the authorities, correct.

11. As regards the compliant by the 2nd Appellant, that no direction was given to the jury on the issue of alibi, we think it is well grounded. The LTJ's direction on this all important issue is to be found at page 359 of the Record. He said inter alia, "...*when an accused raises an alibi, he cannot raise an alibi that is vague; he must particularize. In my view, to say 'I went to a man who lodged me with my wife behind soap factory; the man can I was with him at the time of the shooting; I went to this man at about 1.30am.' Now you do not expect the police to investigate such an alibi because it is vague. The investigators cannot go to soap factory and ask questions about any particular man; he has not given his name; he has not given his address...*" It is our considered Judgment that this direction was palpably wrong. The legal burden always, and at all times rests on the prosecution to prove every element of the offence with which an accused person is charged, and where this is necessary, his presence at the scene of the crime at the relevant time. Once the 2nd Appellant had raised an alibi, it was for the prosecution to destroy it. The Appellants were in custody from the date of their arrest to date. There was nothing stopping the investigators taking the 2nd Accused to the back of soap factory, there to request him to identify the person supporting his alibi. This was clearly not done. The direction given, may have left the jury with the impression that it was down to the 2nd Appellant to prove the truth of his alibi; this was clearly a misdirection. The necessity for a proper direction where the defence of alibi is raised, was acknowledged, though obliquely, in **R v KOROMA (1960-61)** SLLR 221 at 223 per WISEHAM, CJ; that the burden of disproving the alibi raised, rested

throughout on the prosecution, was considered as settled by the Court of Appeal in **SILLAH v R [1964-66]** ALR SL 517 at 520 LL5-9 per SIR SAMUEL BANKOLE JONES,P: "*In this passage, what the learned trial judge was saying was that it was the duty of the appellants to have called evidence to prove their innocence. This is clearly a misdirection in law. Certainly, it is not the law in a case where an accused person has set up an alibi as a defence. In the case of R v Johnson ([1961] 1WLR 1478) it was held that if an accused person puts forward an alibi as an answer to a criminal charge, he does not thereby assume a burden of proving the defence, but the burden of proving his guilt remains throughout on the prosecution,*"

12. As to the complaint that the LTJ did not adequately relate the law to the evidence in order to assist the jury to arrive at just verdicts, we think it is well grounded. What the LTJ did at the start of his Summing-Up , was to explain what was meant by the words "prepare" and "endeavour." What he did not do subsequently, was explain to the jury, whilst dealing with the evidence, which parts of the evidence were probative of the actus reus of preparation, and of endeavouring. The jurors were therefore left to grope in the dark for directions in these respects. The LTJ merely directed them, repeatedly, that if they believed the evidence of the prosecution, they must find each accused guilty of the offence of Treason; if they did not believe the prosecution's evidence, they must return verdicts of Not Guilty. This was clearly insufficient in a case of Treason, where any act of preparation, or of endeavour could constitute the offence.
13. The LTJ also made the mistake of equating the firing at the ATC Compound, as probative by itself, of the offence of Treason. It is our respectful opinion, that the firing at that compound could only be considered as an act of preparation, if conjoined with the meetings held, where it was agreed to overthrow the Government. The evidence of these meetings was provided by the accomplices, four of whom I have referred to above, and in the recorded interviews given by some of the Appellants, some of which contained admissions, or which could be described as confessions. These meetings were not by themselves, irrefragable evidence of an agreement to overthrow the Government. Some of the discussions held at these meetings had more to do with ways of

disturbing the peace, something more akin to an Unlawful Assembly than to full blown Treason.

14. I have dealt with the evidence of accomplices above. As regards confessions, the Law is clear. A jury could convict on the basis of a confession alone, but it is desirable to have outside the confession, some evidence, be it slight, of circumstances which make it probable that the confession was true. This is the direction approved by WACA in **KANU v R** 14 WACA 30 and cited with approval in **KULANGBANDA v R [1957-60]** ALR SL 306 at page 307 LL26-33. The only evidence outside the confessions in this case, connecting the Appellants with meetings during which a coup was planned, and the firing at the ATC Compound, is the evidence of accomplices which itself requires corroboration. As to the firing at the ATC Compound, there are more problems. There were several inconsistencies in the evidence of the prosecution witnesses which deprived it of reliability. Many of these inconsistencies have been highlighted in the synopsis dated 18 March,2008, submitted on behalf of the Appellants jointly, and I need not here repeat them.
15. If the verdicts in respect of Treason cannot be upheld, it follows that the verdict in respect of the offence of Misprision of Treason cannot be upheld as well.
16. In the result, we agree with the Appellants, that the verdicts are unreasonable and cannot be supported having regard to the evidence. We therefore allow all the appeals, and set aside the all the convictions and sentences.

14/11/08

N.C. BROWNE-MARKE, JA

P. O HAMILTON, JA

S. A. ADEMOSU, JA 14/11/08

14 November,2008.