

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

GIBRILLA KALOKOH

INDICTMENT NO: DPP/2016/224

PROSECUTION: AUGUSTINE SHEKU ESQ.

DEFENCE: I SESAY ESQ. AND C TUCKER

JUDGMENT DATED THE 30TH JULY 2016.

Indictment:

By an application made by the Prosecution which was granted by this Court, the Accused Person is now charged with the Offence of Robbery contrary to section 23(2) of the Larceny Act, 1916. According to the Particulars of Offence, the Accused person herein on the on the 3rd day of November 2015 at Freetown, in the Western Area of the Republic of Sierra Leone, robbed Musa Turay, Motor Radiator of the valued of Two Million Leones (Le2,000,000,00).

Before the commencement of the Trial, the Prosecution failed a Trial by a Judge alone application and same was granted by this Court.

The Accused person pleaded not guilty .

Three witnesses testified for the Prosecution. The first Prosecution witness, the PW1, Musa Turay, the Complainant herein, told the Court that he has a personal knowledge of the Accused person for over

twelve years. The PW1 further stated that on the day of the incident, he heard sound and not too long he saw someone descending into his shop from the top and he observed the Accused person taking Radiator and passing same to someone outside. The PW1 told the Court that he alerted his friend Ishmael, and went closer to the Accused person and grabbed the Accused person but the Accused person pulled out a knife from his pocket and threaten to injure him, to secure his safety he released the Accused person and the Accused person returned as he entered his business place at no.42 Race Cuss, Freetown. The PW1 told the Court that the time of the incident the place, that the area was dark since it was by 2am to 3am. The PW1 said he thereafter went to the police and reported.

In Cross, the PW1 told the Court that he identified the Accused person on the date of the incident.

The PW2, Ernest T .M .Bindy, DPC 10476, attached at the Anti Robbery Unit Office, Ross Road, Police Station, Freetown. The PW1 told the Court, on the 3rd day of November 2015 he was on duty when the PW1 made a report of Robbery with Aggravation against the Accused person, a Medical request form was given to the Accused Person for treatment and the endorsed Medical request form produced and tendered as Exhibit A. Following the arrest of the Accused person, the Accused person was cautioned and the Voluntary Cautioned Statement was produced and tendered as Exhibit B1 to 8, in which the Accused person denied the allegation. The Accused Person was charged and the said Charge Statement was tendered as Exhibit C 1 to 2.

In Cross, the Defence, inter alia raised the issue of alibi, in other words the Accused person was not at the scene of crime and does not have knowledge about the offence itself.

Before the testimony of the PW3, the Prosecution filed a Notice of Intention to Call Additional Witness, since this would -be -witness did not testify at the Magistrate Court. The Court takes judicial notice of same and was granted by the Court. In his testimony to the Court, the PW3, said he was with the PW1 on the date of the incident and he was alerted by the PW1, and he observed when the PW1 grabbed the Accused person, but since he was injured he was unable to do anything, but the Accused person said in his presence that he will injured the PW1 if he does not release him. It was then the PW1 released the Accused Person and the Accused person returned through the roof of the said business place.

In Cross, the PW3 told the Court that his business place is different from that of the PW1, the Complainant, but he was in the company of the PW1 on the date of the incident and he observed clearly what the transpired between the Accused person and the PW1.

The Prosecution informed the Court that was the last witness in this case and noted further, following a Preliminary Investigation conducted at the Magistrate Court; the matter was committed to High Court on the 27th November 2015. That was the case of the Prosecution.

Commencement of Defence Case:

The Accused Person relied on his statement made to the police and also said he does not have a witness.

Defence Counsel addressed the Court, and in same raised the following issues; that there is no Corroboration between the testimony of the PW1 and that of the PW3, in that the PW3 said there was light all over the place whilst the PW1 said the place was dark. Here I submit, was misconstrued by the Defence , because the particular question put to the Accused person by then Defence Counsel seeks to ascertain whether the place was dark between 2am to 3am, and the answer from the PW1 was that 2am and 3am , the area , that is the environment at that time must be dark.

But in the Cross examination, of the second Prosecution Witness, by the Defence, the issue of alibi was raise. Here I submit that the Defence did not complete the work. Whenever, a plea in defence of alibi is raised in Law, the Defence must produced witness to tell the Court that either there is someone to come to Court and testify that he was in the Company of the Accused person at the time of the incident, meaning that the Accused person was not at the scene of the crime or if the accused person was alone at the time of the incident someone must account in Court that he knew of the movement of the Accused person just before the allegation, for the Court to conclude that it was impracticable for the Accused person to have been in the crime scene.

But even assuming without conceding, the Accused person said in his Voluntary cautioned Statement that he was at home, he went to bed and woke up at 7am. Here again, the Accused person do not want us to believe that he reside alone in his house or compound and there are no body who knew about his presence at home. Here I submit the defence of alibi raise by the Accused person in his Voluntary Cautioned Statement was defeated in Law.

The Accused Person stand charged for the offence of Robbery and by same if convicted is a penal servitude for life. I submit that the offence of Robbery is committed 'if a person steals and immediately before or at the time of doing so, he uses force on any person or puts any person in fear at the time of the commission of the offence'. This I submit was precisely what occurred in the instance case. The Accused person was spotted by the Complainant descending into his business place from the roof top, the Complainant grabbed him but the Accused person pulled out a knife from his pocket, in fear of his safety, the PW1 released the Accused person. Another element of the offence of Robbery, theft must occur, although in an aggravated form. The PW1 testified that he did see the Accused person passing Motor Radiator through the roof. This again I submit is in tandem with the indictment vis- a- Vis the subject matter that was forcefully stolen by the Accused person.

I therefore submit, the Prosecution has proved its case beyond reasonable doubt as was established and sustained by the Court in the case of Woolmington v. DPP (1935) A.C.462. According to the Court in the case of Woolmington, it was stated inter alia, 'throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt...'

I hold that the Accused person is guilty of the offence of Robbery and the Accused person is accordingly convicted.

ALLOCUTUS:

Defence begged for
Mercy.
Sentence - the

Accused person is
sentence to five
years imprisonment

(M) 15

30-7-2016

Justice Atthaji Saveri
High Court Judge.