FORNAH AND 14 OTHERS v THE STATE

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COURT OF APPEAL FOR SIERRA LEONE, Criminal Appeal 31 of 1975, Hon Mr Justice E Livesey Luke JSC, Hon Mr Justice O B R Tejan JA, Hon Justice Ken E During JA, 30 April 1975

[1] Criminal Law and Procedure – Treason – Preparing and endeavouring to overthrow the Government – Whether "preparing" and "endeavouring" are separate acts – Meaning – Two distinct acts which should be charged separately - Treason and State Offences Act 1963 s 3(1)(a), (b)

[2] Criminal Law and Procedure – Treason – Overt acts – Charge of conspiracy could be laid as an overt act of both species of treason, ie preparing and endeavouring – Agreement to overthrow the Government by unlawful means is a sufficient overt act of the two species of treason – Treason and State Offences Act 1963 s 3(1)(a), (b)

[3] Criminal Law and Procedure – Treason – Applicable law in Sierra Leone – Law regulating trial procedure depends on whether charged with high treason or petit treason – Treason and State Offences Act 1963 offence is regulated by Criminal Procedure Act 1965

[4] Constitutional Law – "Government" – Meaning – Must be interpreted according to context in which it is used – Person or body which exercises executive power in the State – President is the Government of Sierra Leone – Constitution of Sierra Leone s 49(1)

[5] Criminal Law and Procedure – Judge's summing up – Whether direction that witness was an accomplice was correct – Whether direction on corroboration was correct – Whether direction on truthfulness of witness was correct – Whether posing rhetorical questions to the jury was correct

[6] Criminal Law and Procedure – Appeal against conviction – Court not entitled to reverse the verdict of a jury unless no reasonable jury properly directed could have returned the verdict

[7] Criminal Law and Procedure – Sentencing – "Shall be liable to suffer death" – Whether death sentence mandatory or discretionary – Whether judge exercised discretion – Whether court could overturn with exercise of discretion – Whether President of Sierra Leone could exercise prerogative of mercy - Treason and State Offences Act 1963 s 3(1)(a), (b)

[8] Words and Phrases – "Government"

[9] Words and Phrases – "Shall be liable"

The appellants were convicted of Treason contrary to s 3(1)(a) of the Treason and State Offences Act 1963 at the Special Criminal Sessions of the High Court, Freetown on 16 November 1974 of treason after a trial before Marcus Cole J and a jury that lasted 9 weeks. The jury returned a unanimous verdict of guilty on each count in respect of each appellant and the judge sentenced all the appellants to death in respect of each count.

The appellants appealed to the Supreme Court against conviction on various grounds, in particular that the charges of treason were not properly laid, that the correct procedural rules regarding the charge of treason were not applied in the trial and that the trial judge throughout his summing up usurped the function of the jury in deciding and / or tending to decide questions of fact meant for the jury, specifically in relation to accomplices, corroboration, credibility and conspirators. The appellants also appealed against the sentences of death, arguing that the use of the words "shall be liable to suffer death" in s 3 the Treason and State Act 1963 meant that the death penalty was not mandatory.

Held, per Livesey Luke JSC, allowing the appeal for the 11th appellant and dismissing the appeal for the other 14 appellants:

1. The contention that the appellants should have been charged with one offence of "prepare or endeavour" under s 3(1)(a) and (b) of the Treason and State Offences Act 1963 to overthrow the Government by unlawful means was incorrect. The ordinary meaning of "prepare" is "to make ready, put in readiness" and the ordinary meaning of "endeavour" is "to make an effort to do or effect to make an effort to strive". "Preparing" and "endeavouring" are two distinct acts. One may prepare without endeavouring. Endeavour connotes something more than prepare. When one endeavours one has crossed the stage of preparing. The words "prepare or endeavour" in sub-section 3(1)(a) and (b) created two distinct offences which should be charged separately. *Lansana & Ors v R* (1970-71) ALR (SL) 186, *Juxon-Smith v The State* (1970-71) ALR (SL) 361 and *State v Otchere & Ors* (1963) 2 GLR 463 followed.

2. A charge of conspiracy could be laid as an overt act of both species of treason created by s 3(1)(a) of the Treason and State Offences Act 1963, ie, (i) preparing and (ii) endeavouring. It was not correct that conspiracy could only be laid as an overt act where the offence charged was conspiracy to commit treason. *Lansana & Ors v R* (1970-71) ALR (SL) 186 applied.

3. By its very nature, conspiracy is a preparatory act, ie, preparatory to the commission of an unlawful act. So if persons agree to overthrow the Government by unlawful means, that agreement is a preparatory act. That preparatory act amounts to a preparation to overthrow the Government by unlawful means under s 3(1)(a), or may amount to an endeavour to overthrow the Government by unlawful means under s 3(1)(a), or to both. Therefore an agreement to overthrow the Government by unlawful means is a sufficient overt act of the two species of treason created by s 3(1)(a). Therefore the overt acts charging conspiracy in counts I and II of the indictment were properly laid. *Mulcahy v The Queen* (1863) LR 3 HL 306 and *Queen v Aspinall* (1876) 2 QBD 48 applied.

4. The common criminal design was not the overthrow of the Government by unlawful means but the preparation or the endeavour to overthrow the Government by unlawful means. To overthrow the Government by unlawful means was an act of preparation and amounted to the forbidden act of preparing to overthrow the Government by unlawful means under s 3(1)(a) and, depending on the terms of the agreement, may also amount to the forbidden act of endeavouring to overthrow the Government by unlawful means under s 3(1)(a). The direction of the judge that the common design in a charge of preparing to overthrow the Government is the preparation, and in a charge of endeavouring to overthrow the Government is the endeavouring was correct. *Mulcahy v The Queen* (1863) LR 3 HL 306 applied.

5. The word "Government" does not have one invariable or universal meaning. It has different meanings and must be interpreted according to the context in which it is used.

The "Government" means the person or body which exercises executive power in the State. Section 49(1) of the Constitution provides that executive power shall vest in the President, who could exercise executive power directly or through Cabinet, Ministers, etc. Therefore, according to the Constitution, the President is the "Government". *DPP v Chike Obi* (1961) All Nig Rep 186 applied.

6. The procedure laid down by the Treason Act 1695, which was passed for the regulation of trials of the species of treason created by the Treason Act 1351 and the subsequent Treason Acts, was not applicable to the new species of treason created by the Treason and State Offences Act 1963 Act. The Criminal Procedure Act 1965 regulated procedure in criminal trials in Sierra Leone and that is the statute which must be followed in trials for treason under the Treason and State Offences Act 1963.

7. There was nothing wrong in principle for a judge to tell the jury that a particular witness was an accomplice, especially if the evidence of the witness was unfavourable to the accused person. Such a direction is favourable to the accused person and he cannot complain about it. In any case, the judge told the jury that it was within their province to decide which witnesses were accomplices. *R v Chrimes* (1959) 43 Cr App R 149 (CCA) applied.

8. The judge gave the proper direction on corroboration, *viz*, that it is dangerous to convict on the uncorroborated evidence of an accomplice and that some independent testimony was required which tended to show not only that the offence was committed but also that it was committed by the accused.

9. There is nothing wrong in a judge expressing his opinion on the truthfulness of witnesses or on other questions of fact, so long as he does so fairly and make the jury understand that they are not bound by his opinion and leaves the issues of fact to them to determine. *Davies v R* (1957-60) ALR (SL) 348 (CA) and *R v Cohen & Bateman* (1909) 2 Cr App R 197 (CCA) applied.

10. There was nothing wrong in principle in a judge posing questions in his summing up for the jury's consideration. Having carefully read through the summing up, the judge gave a summing up which was fair in every respect and there was no misdirection. The particular form and style of a summing up, provided it contains what must on any view be certain essential elements, will depend not only upon the particulars features of a particular case but also upon the view formed by the judge as to the form and style that will be fair and reasonable and helpful. *McGreevy v DPP* (1973) 1 WLR 276 HL and *R v Linzee* (1956) 3 All ER 980 applied. *R v Kwabena Bio* 11 WACA 46 and *Frampton v R* (1917) 12 Cr App R 202 distinguished.

11. The court was not entitled to reverse the verdict of a jury unless no reasonable jury properly directed could have returned that verdict. The court is not entitled to substitute its views for the verdict of the jury. The court should accept the verdict of the jury, which was one of guilty and which means that the jury were satisfied that the accused did commit the offence. *McGreevy v DPP* (1973) 1 WLR 276 HL applied.

12. There was ample evidence against the 1st appellant on which the jury could convict on both counts, and by their verdict it must be presumed that they did not accept his defence. In the circumstances the court could not interfere with the jury's verdict.

13. The evidence against the 2nd to 10th and 12th to 15th appellants was overwhelming and in no reasonable jury properly directed could have failed to return a verdict of guilty against them on both counts. In the circumstances, the court could not interfere with the verdicts.

14. There was no evidence that the 11th appellant participated in the discussion going on in the room whilst he was in the parlour of the 2nd appellant's house. The evidence of PW10 that the 11th appellant heard what was discussed in the room might have been only an opinion or an assumption. As such, it was unsafe to base a conviction on such unsatisfactory evidence. The admissions contained in his statement to the police may amount to the offence of misprison of treason but certainly not to treason. Therefore it was unsafe to uphold the conviction of the 11th appellant for treason and the conviction was quashed on both counts and the sentences set aside.

15. The words "shall suffer death" imported mandate whilst the words "shall be liable to suffer death" in s 3 of the Treason and State Offences Act 1963 imported a discretion. The sentence of death under s 3 of the Treason and State Offences Act 1963 was discretionary and not mandatory. The trial judge had a discretion as to whether to pass the death sentence or not. If the judge had a discretion, it must be presumed that he exercised it by imposing the maximum penalty provided under the section, ie by passing the sentence of death. *James v Young* (1884) 27 Ch D 652, *Re Loftus-Otway* (1895) 2 Ch 235, *Opoya v Uganda* (1967) EA 752 and *Mattaka and Ors v Republic* (1971) EA 495 applied. *Kichanjele s/o Ndamunga v R.* (1941) 8 EACA 64 not followed.

Per curiam

1. The Treason Act 1695 may still be in the statute book of Sierra Leone, but it was not applicable to the species of treason created by the Treason and State Offences Act 1963. If the Treason Act 1695 was still applicable in Sierra Leone, it was applicable only to trials under the unrepealed Imperial Treason Acts, eg, the Treason Act 1702 and the Treason Act 1795.

2. The question of the prerogative of mercy was irrelevant. It was erroneous of Ken During JA to say that when a judge is exercising a discretion conferred upon him by law he is usurping the prerogative of mercy of the President. The President could still exercise the prerogative of mercy under s 63 of the Constitution whether the sentence passed by a judge is mandatory or discretionary. So where the judge exercised his discretion by imposing the death penalty, as in the instant case, the President could still exercise his prerogative of mercy. Similarly if the judge had, in the exercise of his discretion, passed sentences of imprisonment, the President could still exercise his prerogative of mercy by, for example, granting a free pardon or remitting the whole or part of the punishment.

Cases referred to

Davies v R (1957-60) ALR (SL) 348 (CA)
DPP v Chike Obi (1961) All Nig Rep 186
Frampton v R (1917) 12 Cr App R 202.
James v Young (1884) 27 Ch D 652
Juxon-Smith v The State (1970-71) ALR (SL) 361
Kichanjele s/o Ndamunga v R. (1941) 8 EACA 64
Lansana & Ors v R (1970-71) ALR (SL) 186
McGreevy v DPP (1973) 1 WLR 276 HL
Mattaka and Ors v Republic (1971) EA 495
Mulcahy v The Queen (1863) LR 3 HL 306
Opoya v Uganda (1967) EA 752
Queen v Aspinall (1876) 2 QBD 48
Re Loftus-Otway (1895) 2 Ch 235
R v Chrimes (1959) 43 Cr App R 149 (CCA)
R v Cohen & Bateman (1909) 2 Cr App R 197 (CCA)
R v Kwabena Bio 11 WACA 46

R v Linzee (1956) 3 All ER 980
R v Thistlewood (1820) 33 St Tr 681
State v Kaloko & Ors
State v Otchere & Ors (1963) 2 GLR 463
Samsoondar Ramcharan v The Queen [1973] AC 414

Legislation referred to
Act for Regulating of Trials in Cases of Treason and Misprision of Treason 1695 s 7
Act of Settlement 1701
Courts Act 1965 s 74
Criminal Code 1960 (Ghana) s 180(1)(a), (b), (c), (d)
Criminal Procedure Act No 31 1965 ss 216, 218
Constitution of Siera Leone 1971 ss 16(1), 49, 63
Constitution (Amenment) Act No 3 1973 ss 1(i)
Interpretation Act No 8 of 1971 s 4
Larceny Act 1916 ss 24, 25
Larceny Ordinance (Chapter 4, No 11) s 34(1)
Larceny Ordinance (Trinidad and Tobago) s 38
Offences Against the Person Act 1861 s 1
Official Secrets Act
Penal Code of Kenya s 26
Penal Code of Tanzania s 39
Treason Act 1351
Treason Act 1695 ss 1, 2, 3
Treason Act 1702 s 3
Treason Act 1795 s 1
Treason Act 1817
Treason and State Offences Act 1963 ss 3(1) (a), 18, 19(2)

Other sources referred to
Dictionary of English Law
Maxwell on Interpretation of Statutes 11th Edition, p 87

Appeal
This was an appeal by by the appellants against their conviction of treason on 16 November 1974 after a trial before Marcus Cole J and jury and sentence to death. The 14 appellants were Mohamed Sorie Fornah, Habib Lansana Kamara, Ibrahim Taqi, Adbul Bai Kamara, David Lansana, Abu Mohamed Kanu, Albert Tot Thomas, Alusaine Bedor Kamara, Hamed Bundu Kamara, George Thompson, Issa Jalloh, Bai Makari N'Silk, Alimamy Mansaray, Mohamed Turay and Unfa Mansaray. The facts appear in the following judgment of Livesey Luke JSC. General Editor's Note: for a history of the life of Mohamed Forna and the events leading up to the trial and punishment of the appellants see Aminetta Forna, '*The Devil That Danced on the Water: A Daughter's Memoir*', Harper Collins, 2003.

MrA B Yilla and Mr C J W Atere–Roberts for 1st, 2nd, 8th, 9th and 14th appellants.
Mrs S Taqi for 3rd, 12th, and 15th appellants.
Mr Eke Halloway for 4th, 6th, 7th, 11th and 13th appellants.
Mr F S Conteh for 5th and 10th appellants.
The Hon N A P Buck Attorney-General and with him the Solicitor-General, Mr C S Davies, Mr M O Adophy and Mr M S Turay for the State.

LIVESEY LUKE JSC: The appellants were convicted at the Special Criminal Sessions of the High Court, Freetown on 16 November 1974 of Treason after a trial before Marcus Cole J and a jury that lasted 9 weeks. The indictment upon which the appellants were convicted contained two counts, *viz*:

"First Count

Statement of Offence: Treason, contrary to s 3(1)(a) of the Treason and State Offences Act 1963.

Particulars of Offence: Mohamed Sorie Fornah, Habib Lansana Kamara, Ibrahim Taqi, Adbul Bai Kamara, David Lansana, Abu Mohamed Kanu, Albert Tot Thomas, Alusaine Bedor Kamara, Hamed Bundu Kamara, George Thompson, Issa Jalloh, Bai Makari N'Silk, Alimamy Mansaray, Mohamed Turay and Unfa Mansaray on 1 June 1973 and on divers days between that day and 14 August 1974 in the Western Area of Sierra Leone, prepared to overthrow the Government of Sierra Leone by unlawful means.

Overt Acts of the said Treason:

1. On 1 June 1973 and on divers dates between that day and 30 July 1974 in the Western Area of Sierra Leone the said Mohamed Sorie Fornah, Habib Lansana Kamara, Ibrahim Taqi, Adbul Bai Kamara, David Lansana, Abu Mohamed Kanu, Albert Tot Thomas, Alusaine Bedor Kamara, Hamed Bundu Kamara, George Thompson, Issa Jalloh, Bai Makari N'Silk, Alimamy Mansaray, Mohamed Turay and Unfa Mansaray conspired together and with other persons unknown to overthrow the Government of Sierra Leone in that they agreed:

   (a) to kill the then Acting President the Hon Sorie Ibrahim Koroma by attacking his official residence by means of explosives;

   (b) to kill the then Acting Vice-President the Hon Christian Alusaine Kamara-Taylor by attacking his official residence by means of explosives;

   (c) to kill the Force Commander Brigadier J S Momoh by attacking his official residence by means of explosives;

   (d) to attack, seize and take control of the Magazine at Tower Hill, Freetown;

   (e) to seize and take control of the Sierra Leone External Communications establishment in Wilberforce;

   (f) to overthrow and take over the Government of Sierra Leone.

2. Mohamed Sorie Fornah, on a day unknown between 1 July 1974 and 29 July 1974 at 60 Kissy Road, Freetown in the Western Area incited Warrant Officer Class I Yaya Seidi Kalogoh, Private Bassie Kargbo, Private Momoh Suma, Mohamed Dumbuya, Sergeant Thomas Davies to overthrow the Government of Sierra Leone by force by giving them the sum of Le100.00.

3. David Lansana, Mohamed Sorie Fornah, Habib Lansana Kamara, on a day unknown between 1 July 1974 and 29 July 1974 at No 11 Milston St, Murray Town in the Western Area incited Warrant Officer Class I Yaya Seidi Kalogoh, Sergeant Thomas Davies, Sergeant Edward Musa Kandeh, Private Mohamed Amara, L/Cpl Keindeake Sesay, Warrant Officer Class II Thomas Patrick Kowa to overthrow the Government of Sierra Leone by unlawful means.

4. Abdul Bai Kamara, Bai Makari N'Silk and Issa Jalloh on a day unknown between 1 July 1974 and 29 July 1974 at No 11 Milton St, Murray Town in the Western Area encouraged

David Lansana, Mohamed Sorie Fornah and Habib Lansana Kamara to continue with their plan to overthrow the Government of Sierra Leone by unlawful means.

5. Ibrahim Taqi, Hamed Bundu Kamara, on a day unknown between 1 July 1974 and 29 July 1974 at Kissy in the Western Area incited Private Momoh Suma, Private Bassie Kargbo, Foday Carpenter and other unknown by giving them Le200.00 to be used in furtherance of the plot to overthrow the Government of Sierra Leone.

6. Mohamed Sorie Fornah, on a day unknown between 1 July 1974 and 30 July 1974 at No 11 Milton St, Murray Town in the Western Area gave Abraham Kemoko Suma the sum of Le 80 to purchase ammunition for use in carrying out the plot to overthrow the Government of Sierra Leone.

7. Mohamed Sorie Fornah, Abu Mohamed Kanu on a day unknown between 1 July 1974 and 29 July 1974 procured from Lunsar in the Port Loko District a quantity of explosives with the intent to use the said explosives to kill the then Acting President the Hon Sorie Ibrahim Koroma, the then Acting Vice-President the Hon Christian Alusaine Kamara-Taylor, the Force Commander Brigadier J S Momoh and to blow up the Magazine at Tower Hill, Freetown.

8. Mohamed Turay and Alimamy Mansaray on 1 June 1973 and on divers days between that day and 29 July 1973 at Mammy Yoko St, Freetown, P Z Compound Wilberforce and 11 Milton St, Murray Town all the Western Area aided Habib Lansana Kamara in plotting the overthrow of the Government of Sierra Leone by unlawful means.

9. Alusaine Bedor Kamara, George Thompson and Abdul Bai Kamara on 1 July 1974 and on divers days between that day and 29 July 1974 at Freetown and Kissy in the Western Area procured Alimamy Mohamed Kargbo alias Kampala, George Ojumiri Cole, Alpha Mohamed Sawaneh, Alimamy Bakarr Kamara and other persons unknown to attack with explosives the then Acting President the Hon Sorie Ibrahim Koroma, the then Acting Vice-President the Hon Christian Alusaine Kamara-Taylor, the Force Commander Brigadier J S Momoh in their respective official residences and to blow up the Magazine at Tower Hill, Freetown.

10. Unfa Mansaray on 1 June 1973 and on divers days between that day and 29 July 1974 at Wilberforce and Murray Town in the Western Area aided Habib Lansana Kamara, Bai Makhari N'Silk, Mohamed Sorie Fornah, Ibrahim Taqi and other persons unknown by summoning meetings and providing a meeting place for the above-named persons to organise a plot to overthrow the Government of Sierra Leone by unlawful means.

11. Ibrahim Taqi, Abu Kanu, Mohamed Sorie Fornah, Abdul Bai Kamara and Hamed Bundu Kamara on or about 29 July 1974 provided transport to convey Alimamy Mohamed Kargbo alias Kampala, Alpha Mohamed Saweneh and other persons unknown to Murray Town and from there to points near the official residence of the then Acting President the Hon Sorie Ibrahim Koroma, the then Acting Vice-President the Hon Christian Alusaine Kamara-Taylor, the Force Commander Brigadier J S Momoh and the Magazine at Tower Hill, Freetown in furtherance of the plot to overthrow the Government of Sierra Leone by unlawful means.

Second Count

Statement of Offence: Treason, contrary to s 3(1)(a) of the Treason and State Offences Act 1963.

Particulars of Offence: Mohamed Sorie Fornah, Habib Lansana Kamara, Ibrahim Taqi, Adbul Bai Kamara, David Lansana, Abu Mohamed Kanu, Albert Tot Thomas, Alusaine Bedor Kamara, Hamed Bundu Kamara, George Thompson, Issa Jalloh, Bai Makari N'Silk, Alimamy

Mansaray, Mohamed Turay and Unfa Mansaray on 1 June 1973 and on divers days between that day and 14 August 1974 in the Western Area of Sierra Leone, prepared to overthrow the Government of Sierra Leone by unlawful means.

Overt Acts of the said Treason:

1. On 1 June 1973 and on divers dates between that day and 30 July 1974 in the Western Area of Sierra Leone the said Mohamed Sorie Fornah, Habib Lansana Kamara, Ibrahim Taqi, Adbul Bai Kamara, David Lansana, Abu Mohamed Kanu, Albert Tot Thomas, Alusaine Bedor Kamara, Hamed Bundu Kamara, George Thompson, Issa Jalloh, Bai Makari N'Silk, Alimamy Mansaray, Mohamed Turay and Unfa Mansaray conspired together and with other persons unknown to overthrow the Government of Sierra Leone in that they agreed:

   (a) to kill the then Acting President the Hon Sorie Ibrahim Koroma by attacking his official residence by means of explosives;

   (b) to kill the then Acting Vice-President the Hon Christian Alusaine Kamara-Taylor by attacking his official residence by means of explosives;

   (c) to kill the Force Commander Brigadier J S Momoh by attacking his official residence by means of explosives;

   (d) to seize and take control of the Sierra Leone External Communications establishment in Wilberforce;

   (e) to overthrow and take over the Government of Sierra Leone.

2. Mohamed Sorie Fornah, Habib Lansana Kamara, Ibrahim Taqi, Abdul Bai Kamara, David Lansana, Albert Tot Thomas and other persons unknown on 30 July 1974 at the Murray Town Cemetery in the Western Area incited Alimamy Bakarr Kamara, Alusaine Bedor Kamara, Alimamy Mohamed Kargbo alias Kampala, George Thompson and other persons unknown to go and kill by means of explosives the then Acting President the Hon Sorie Ibrahim Koroma, the then Acting Vice-President the Hon Christian Alusaine Kamara-Taylor, the Force Commander Brigadier J S Momoh and to blow up the Magazine at Tower Hill, Freetown.

3. George Thompson and other persons unknown on 30 July 1974 at Spur Road, Wilberforce in furtherance of the plot to overthrow the Government of Sierra Leone by unlawful means and with intent to kill the then Acting Vice-President the Hon Christian Alusaine Kamara-Taylor attacked his official residence with explosives."

The jury returned a unanimous verdict of guilty on each count in respect of each appellant and the learned judge sentenced all the appellants to death in respect of each count.

The case for the prosecution was that since 1 June 1973, the appellants and others had been planning to overthrow the Government of Sierra Leone by unlawful means and that in furtherance of that plane the appellants held several meetings and did several acts between that data and 30 June 1974. The prosecution called eighteen witnesses. In view of the number of appellants and the number and nature of the Over Acts laid in the indictment, I consider it necessary and useful to give a summary of the evidence relating to the plot.

According to the evidence most of the meetings were held at Murray Town, but other meetings were held at Freetown, Wilberforce and Kissy.

The fourth prosecution witness Morlai Sallieu Kamara, an ex-soldier, gave evidence of several meetings he attended. The witness said that at the invitation of the 4th appellant he visited the he visited the 4th appellant at Kissy on a night in March 1974 and that the 4th

appellant informed him, inter alia, that the soldiers wanted to fight to overthrow the Government of Sierra Leone. The witness said that one night in July 1974 he went to the residence of the 9th appellant at Kissy and that he met the 9th appellant, the 3rd appellant, one Regimental Sergeant Major Kaloko of the Sierra Leone Army and Private Bassie Kargbo of the Army (PW10) and one Foday Sesay, on ex-serviceman. He said that RSM Kaloko told the 9th appellant that he wanted Le500 to purchase uniforms for ex-servicemen who would take part in the overthrow of the Government. The 3rd appellant then said that Le500 was too much and that he could only provide Le200 which he there and then produced and handed to the 9th appellant. The 9th appellant in turn handed the Le200 to RSM Kaloko. The witness said that on another evening the 2nd appellant and one Sgt Davies of the Army went to his residence at Kissy. He said that the 2nd appellant told him that the purpose of their visit was to inform of the arrangements he (the 2nd appellant) had made in connection with the plan to overthrow the Government. The 2nd appellant said inter alia that he would want one ex-serviceman Sheku Koroma, one ex-serviceman Abdualai Serrie and Sgt Davies of the Army to take over the Sierra Leone Radio Station during the night of the overthrow of the Government. The witness said that about three days later at Kissy Road, Freetown the 6th appellant told him that he and the 8th appellant were going to Lunsar to purchase dynamite. The witness said that on the evening of 29 July 1974 as a result of a message he received he went to the residence of the 2nd appellant at Murray Town with Foday Sesay and one Alimamy Kargbo. While there the 1st appellant and others arrived and they went into the house. The witness said that the 2nd appellant told him that he had gone to Waterloo that day to see a sub-Inspector of Police in connection with arms and ammunition for the coup d'etat and on his way back from Waterloo he had called at the Central Police Station, Freetown to see some members of the Internal Security Unit (ISU). The 2nd appellant further said that the 14th appellant had asked him at the Central Police Station about the arms and ammunition for the coup d'etat and that from Central Police Station, he went to RSM Kaloko at Wilberforce Army Barracks and that he (the 2nd appellant) asked RSM Kaloko about the take over of the Government and RSM Kaloko replied that everything was ready for the operation to take over and that they were waiting for the blasts. The 2nd appellant also told him that he also went to RSM Thomas for the key to the ammunition store which RSM Thomas had promised to give him and that RSM Thomas told him not to worry as they were all ready and waiting for the operation. The witness said that the e2nd appellant then said in the presence of the 1st appellant, the 3rd appellant, the 5th appellant, the 7th appellant, the 10th appellant, the 15th appellant, Alimamy Kargbo, Foday Sesay, Private Bassie Kargbo, one Joseph Koroma, one Abdualai Munu and one Sheku Kamara that they should not be afraid. He (the witness) then asked the 5th appellant whether they had any outside support meaning from any foreign country. He said that the 5th appellant replied that they should not worry. The 5th appellant also said that he had spoken to some Army Officers and ended by saying, "Gentlemen, there is nothing you should fear, you rest assured".

The 2nd appellant then asked them to go to the Sierra Leone Grammar School near the Murray Town Cemetery and they all moved to the cemetery. The witness said that he saw soldiers in uniforms and civilians at the cemetery and that the persons he saw at the cemetery included the 1st appellant, the 2nd appellant, the 3rd appellant, the 5th appellant, the 6th appellant, the 8th appellant, the 10th appellant, the 15th appellant, one Anderson, one Alpha, Joseph Momoh, Alimamy Kargbo, one ex-serviceman Stevens, ex-serviceman Foday Sesay, ex-serviceman Abdualai Munu, ex-serviceman Mustapha Koroma, ex-serviceman Sheku Kamara, one Fullah (a civilian) and the following soldiers: Sgt Davies, Sgt Kandeh, Private Mohamed Amara, Private Farmer and Farmer Bassie Kargbo. The witness said that some of the soldiers were dressed in combat uniforms and others in blue shirts. He said that while they were by the cemetery, the 2nd appellant called the 8th appellant and asked him to bring the dynamite. He said that the 8th appellant and some civilians then brought some cartons. The 2nd appellant then asked the soldiers which of them knew how to explode dynamite and the soldiers and ex-servicemen

replied that they did not know how to explode dynamite. The 8th appellant then said he had taken some men there who knew how to explode dynamite. The witness said that sometime after midnight the 2nd appellant divided the men into four groups. The 2nd appellant instructed the first group to go to the residence of the Hon C A Kamara-Taylor, the then Acting Vice-President at Spur Road, Wilberforce, blast the house with dynamite and arrest Mr Kamara-Taylor. The 2nd appellant instructed the second group to go to the residence of Brigadier Momoh, the Force Commander of the Sierra Leone Military Forces, blast the house with dynamite and arrest the Brigadier. The 2nd appellant instructed this group to go to the Magazine at Tower Hill, Freetown, blast the Magazine with dynamite, kill the guards and take arms and ammunition from the Magazine. The 2nd appellant instructed the fourth group to go to the residence of the Acting President at Hill Station, blast the house with dynamite and arrest the Acting President. The witness said that the first group included Sgt Kandeh and the 10th appellant, that the second group included Private Mohamed Amara, the 7th appellant and Alimamy Bakarr Kamara (PW12), that the third group included Sgt Davies, ex-serviceman Stevens and ex-serviceman Foday Sesay and that the fourth group included Alimamy Kargbo and himself (the witness). The witness said that the 2nd appellant then announced that the time for the operation was 3.30am and that that was the time the first blast should go off.

The 1st appellant then said that the first blast should be at the residence of Mr C A Kamara-Taylor. The witness said that the various groups were conveyed from the cemetery in cars and that the 6th appellant drove one of the cars. The witness said that when they were leaving the 1st appellant wished them good luck.

The tenth prosecution witness Bassie Kargbo, a soldier, gave evidence of a number of meetings he attended. He said that one morning in July 1974 at the request of RSM Kaloko he went to the 1st appellant's office at Walpole St, Freetown to inquire from the 1st appellant when a meeting would be held at Kissy Road. He said that he delivered the message to the 1st appellant. The 1st appellant told him that the meeting would take place at 60 Kissy Road, Freetown at 9.30 that night and that he and RSM Kaloko should attend. The meeting took place at 60 Kissy Road, the residence of the 6th appellant that night. Those present at the meeting were one Private Momoh Suma, a soldier, one Mohamed Dumbuya, Foday Sesay, the 6th appellant, the 1st appellant, the 2nd appellant, Sgt Davies, PW3, one ex-sergeant Bassie, RSM Kaloko and one Allie Stevens, ex-serviceman. The 1st appellant asked Kaloko how far he had gone with the plan to overthrow the Government. Kaloko replied that the plans were far advanced. The 1st appellant then said to Kaloko that he should not be afraid as he (Kaloko) had his full support in the plan to overthrow the Government and that he (the 1st appellant) had many people who would join them to overthrow the Government. Kaloko replied that he was not afraid. Sgt Davies then asked the 6th appellant what plans they had made. The 6th appellant replied that they had got many civilians who would join the soldiers to overthrow the Government. The witness said that the 1st appellant gave him the sum of Le100 saying that it was for their transport expenses. The witness said that he attended a meeting at the residence of the 13th appellant at Mammy Yoko St, Freetown. Those present at the meeting were the 13th appellant who is a sub-inspector in the ISU, the 14th appellant who is a sergeant in the ISU and the 2nd appellant. The 2nd appellant told the 13th appellant that the 1st appellant had sent him to find out how far they had gone with the plan to overthrow the Government. The 13th appellant replied that they were still working on the plan, but that an empty sack does not stand. The 13th appellant said that they had got many men on their side and that they wanted money. The 13th appellant said that if the 2nd appellant gave him money he could use it to induce the men to overthrow the Government. The 2nd appellant then assured the 13th appellant that he would inform the 1st appellant of what the 13th appellant had said.

Sometime after the meeting at Mammy Yoko St, the witness and Private Momoh Suma went to the Central Police Station where they met the 14th appellant. The witness said that the

14th appellant asked him if he did not know that they were planning to overthrow the Government and whether they (the witness and others) at Wilberforce Barracks were ready to carry out the plan. The witness said that he replied that they were ready.

The witness also deposed about a meeting he attended at the 9th appellant's residence at Kissy in 1974. The other persons present were the 9th appellant, the 3rd appellant, RSM Kaloko and Private Momo Suma.

The 3rd appellant and the 9th appellant asked Kaloko how far he had gone with the plan to overthrow the Government and Kaloko replied that he was ready to execute the plan. The 3rd appellant then asked Kaloko whether he had guns and Kaloko replied in the affirmative. Kaloko said that he wanted Le500 to purchase uniforms for ex-servicemen who would take part in the operation. The 3rd appellant said that Le500 was too much and said he would provide Le200. The 3rd appellant then produced the sum of Le200 and handed it to the 9th appellant who in turn handed it to Kaloko.

The witness also gave evidence that on a Sunday morning he and Allie Stevens went to the residence of the 5th appellant. The 5th appellant complained to them that Sgt Major Kowa was not pursuing the plan to overthrow the Government with sufficient seriousness. The 5th appellant then instructed them to go out in search of Sgt Major Kowa. The witness said that they could not trace Kowa and they returned to the residence of the 5th appellant and informed him accordingly. The 5th appellant then instructed the witness to return to Wilberforce Barracks and inform Kowa to meet him (the 5th appellant) at the 2nd appellant's residence.

The witness gave evidence of four meetings he attended at PZ Compound, Wilberforce. The meetings were held in a room at the servant's quarters occupied by Saidu Brima (PW11). The witness said that the following attended the first meeting: the 2nd appellant, the 15th appellant, RSM Kaloko, Sgt Major Kowa of the Army, Sgt Davies, the 13th appellant, the 14th appellant, the 12th appellant, Private Momoh Suma, Allie Stevens, one Pa Karimu, one Saidu, and one Mustapha who was the chauffeur of the 5th appellant when the latter was the Force Commander of Sierra Leone Military Forces. The witness said that the 2nd appellant introduced Kaloko to the 13th appellant as the Kaloko he had told him about. The 13th appellant then asked Kaloko if they were prepared to overthrow the Government. Kaloko replied that he had the support of many people in the plan to overthrow the Government. The 13th appellant then asked Kaloko if they had ammunition and Kaloko replied in the affirmative. Whereupon the 13th appellant asked Kaloko to state the quantity of ammunition they had. Kaloko replied that they had eight boxes and that they were in that room. The 13th appellant then said that the ammunition was enough to start with. The 12th appellant then asked Kaloko if they had guns, but before Kaloko could answer, the 13th appellant interjected to ask where the guns were kept. Kaloko said that they were in the Guard Room at the Wilberforce Army Barracks. The 12th appellant then asked Kaloko how many guns were in the Guard Room and Kaloko replied that there were 150. The 13th appellant then told Kaloko that some members of ISU who were on leave had guns and suggested that their guns should be taken and handed to Kaloko. The 13th appellant added that the plan to overthrow the Government must not be taken lightly. The 14th appellant then told Kaloko that as they had intimated many members of the ISU of the plan, the matter should be taken seriously and Kaloko expressed agreement.

Those present at the second meeting were: the 2nd appellant, the 4th appellant, the 10th appellant, the 12th appellant, the 15th appellant, RSM Kaloko, Sgt Major Kowa of the Army, one Mustapha, Allie Stevens, Private Momoh Suma and Pa Karimu. The witness said that the 12th appellant said to Kaloko that they had gone there to enquire about the position regarding the plan to overthrow the Government. Kaloko replied that they were ready to carry out the plan. The 12th appellant then told Kaloko that he should not be afraid to go ahead with the plan as he had their support and that they had recruited many civilians who would join in the overthrow of

the Government. Kaloko replied that he was not afraid. The 4th appellant then assured Kaloko that he had their full support. Kaloko then introduced Sgt Major Kowa to the 2nd appellant. The 2nd appellant said that he had expressed a wish to meet Sgt Major Kowa in connection with the plan to overthrow the Government. Sgt Major Kowa said that he supported the plan and in answer to a question by the 2nd appellant he stated that he was in charge of the "C" Company and that he had 100 soldiers under his control.

The third meeting this witness deposed about took place some time in 1974. Apart from the witness, the following attended: the 2nd appellant, the 15th appellant, RSM Kaloko, Sgt Major Kowa and Private Momoh Suma. He said that the 2nd appellant asked Kaloko how far the plan to overthrow the Government had gone and Kaloko replied that they were still working on the plan. The 2nd appellant reminded Kaloko that he had previously asked him (Kaloko) who had got mortar plate (a weapon). Kaloko said that Sgt Major Morseray and Sgt Major Margai had the weapon, adding that he had told Sgt Major Morseray and Sgt Major Margai that at the time of the execution of the plan, he would take the weapon from them. The 2nd appellant expressed satisfaction.

The 2nd appellant then asked Kaloko about the guns in the Guard Room of the Wilberforce Army Barracks and how they were going to get the key to the Guard Room. Kaloko replied that he had told one Cpl Lansana and that Cpl Lansana would have the key. The 2nd appellant then asked Kaloko where they would get transport for the operation. Kaloko replied that he had made arrangements with the personnel of the Military Transport Unit at Wilberforce Barracks and that one Sgt Cota and Sgt Mansaray would make the vehicles available. The 2nd appellant asked Kaloko how many vehicles he was expecting to get and Kaloko replied that he was expecting ten vehicles. The 2nd appellant then expressed satisfaction.

The fourth meeting was held in June or July 1974. Apart from the witness those present were the 2nd appellant, RSM Kaloko and Sgt Major Kowa. The witness said that the 2nd appellant informed Kaloko that he had given the money requested by the 13th appellant as an inducement to participate in the plan to overthrow the Government, to the 13th and 14th appellants.

The witness also gave evidence of meeting he attended at the residence of the 2nd appellant at 11 Milton St, Murray Town. He said that the first meeting was held sometime in 1974. The others present were the 1st appellant, the 2nd appellant, the 7th appellant, Sgt Davies, Sgt Kandeh of the Army, Sgt Koindeka of the Army, Allie Stevens and Mustapha. The 2nd appellant asked Sgt Davies how far he had gone in getting the support of soldiers at the Murray Town Army Barracks. Sgt Davies replied that he had instructed many soldiers including Sgt Major Milton, Staff Sgt Amara, Staff Sgt Konder and Sgt Major Dabor about the plan. The 2nd appellant expressed satisfaction.

The 2nd appellant then asked Koindeka about the attitude of on Sgt Major Ansumana and Koindeka replied that Sgt Major Ansumana had promised to provide one box of ammunition and one grenade. The 2nd appellant expressed satisfaction. At the stage the 5th appellant arrived, followed by RSM Kaloko and then by Sgt Major Kowa. The 5th appellant asked Kaloko when the plan would be executed. Kaloko replied that the 5th appellant was too much in a hurry to execute the plan, and that they had not yet completed their preparation. The 5th appellant then got annoyed. The 1st appellant then suggested to the 5th appellant that they should fine out the position from Kowa. The 1st appellant asked Kowa when the plan would be executed and Kowa replied that they should be given another month. Differences of opinion then ensued resulting in a heated argument. In the course of the argument the 5th appellant said that they should leave Kaloko out of the plan because Kaloko was waiting until he got a helicopter before executing the plan. The 1st appellant then said that they should allow Kaloko the extra one month requested.

The next meeting was on Saturday 27 July 1974. Apart from the witness, those present were the 2nd appellant, the 7th appellant, Sgt Kandoh, Sgt Davies, one Private Amara of the Army, one Lt Cpl Kaindeka Seisay of the Army, Private Momoh Suma, Mustapha, one Staff Sgt Boima of the Army and Allie Stevens. The 2nd appellant announced to the meeting that they should all assemble at his residence at 9pm on Monday 29 July 1974 for the purpose of carrying out the plan. The whole group expressed satisfaction.

The witness said that in accordance with the arrangement he went to the 2nd appellant's residence at 9pm on Monday 29 July 1974. He was accompanied by one Mohamed Sesay, a soldier. On arrival he met the 2nd appellant, the 1st appellant, the 3rd appellant, the 5th appellant, the 7th appellant, the 15th appellant, PW3 Foday Sesay, one Alimamy Kargbo alias Kampala, Sgt Davies, Sgt Kandeh, Mustapha and Allie Stevens. The 2nd appellant announced to the group that the day had arrived to carry out the plan to overthrow the Government. The 2nd appellant then asked them to go the Murray Town Cemetery and wait there. Some of them went to the cemetary but the 1st appellant, the 2nd appellant, the 3rd appellant, the 7th appellant and 15th appellant stayed behind in the house. The witness said that whilst he and the others were at the cemetary, the 1st appellant, the 2nd appellant, the 3rd appellant, the 5th appellant, the 6th appellant, the 7th appellant, the 8th appellant and the 10th appellant arrived. The 8th appellant produced some sticks of dynamite from a carton and handed them to the 2nd appellant. The 2nd appellant then proceeded to divide the men into four groups. The first group included Sgt Kandeh and the 6th appellant. The 2nd appellant informed them that their target was the residence of Hon C A Kamara-Taylor. The second group included Sgt Davies and Allie Stevens. The 2nd appellant informed them that their target was the Magazine at Tower Hill. The third group was headed by Private Amara. The 2nd appellant informed them that their target was the residence of Brigadier Momoh the Force Commander at Spur Road, Wilberforce. The fourth group was headed by Morlai Sallieu Kamara (PW3). The 2nd appellant informed them that their target was the residence of the Hon S I Koroma at Hill Station. The 2nd appellant handed sticks of dynamite to each group. Each group left by car for their respective target.

Saidu Brima, s steward employed at the PZ Compound, Wilberforce also gave evidence as 11th prosecution witness. He gave evidence about three meetings at the PZ Compound and two at Murray Town. According to this witness all the meetings at PZ Compound were held in a room at the servant's quarters where he lived. The first two meetings at PZ Compound took place in June or July 1974. The following attended the first meeting: the 2nd appellant, the 6th appellant, the 12th appellant, the 15th appellant, one Pa Sillah, PW 10 Private Momoh Suma, one Stevens, RSM Kaloko and one Karimu. He said that the 12th appellant appealed to Kaloko to assist them by getting soldiers to overthrow the Government. Kaloko promised to inform the soldiers of what they had discussed.

The following attended the next meeting: the 2nd appellant, the 6th appellant, the 12th appellant, the 15th appellant, RSM Kaloko, PW 10 Private Momoh Suma, Stevens, Karimu, Sgt Major Kowa, Sgt Davies and one Pa Sillah. Kaloko informed the 12th appellant that he had informed the soldiers and that they had agreed to overthrow the Government. Kaloko then appealed to the 2nd appellant to procure some money to be used to further the plan.

The following attended the next meeting: the 2nd appellant, the 12th appellant, the 15th appellant, Pa Sillah, one Fatoma, one Sowa, Private Momoh Suma, PW 10, Sgt Davies, Sgt Major Kowa and Karimu. Sgt Davies accused Kaloko of being too slow in making arrangements for the execution of the plan to overthrow the Government. A quarrel then ensued between Davies and Kaloko but the 2nd appellant intervened and advised them to stop quarrelling. The 2nd appellant then announced that a meeting would take place at his residence and that some important men would be attending.

The witness attended the first meeting at the 2nd appellant's residence at the invitation of the 15th appellant. The meeting was held at night and the following were present: the 1st appellant, the 2nd appellant, the 3rd appellant, the 4th appellant, the 5th appellant, the 6th appellant, the 12th appellant, Pa Sillah, PW10, Private Momoh Suma, Sgt Davies, RSM Kaloko, Sgt Major Kowa, Fatoma and Sowa. The 2nd appellant said that he was ready to execute the plan and that he had procured many sticks of dynamite. The 6th appellant then remarked that the soldiers had previously said that they did not have ammunition to carry out the coup but now they had got dynamite. Kaloko then said that everything should be left in the hands of the soldiers.

The next meeting attended by the witness at the 2nd appellant's residence was held on the evening of Monday 29 July 1974. He attended at the invitation of the 15th appellant. Those present were the 1st appellant, the 2nd appellant, the 3rd appellant, the 4th appellant, the 12th appellant, RSM Kaloko, Sgt Davies, PW10, PW3 and many other civilians soldiers. Some of the people were in the house and others were in the compound. The 2nd appellant said, inter alia, that as part of the operation they should throw dynamite into the residence of the Hon S I Koroma, the Hon C A Kamara-Taylor and the Force Commander and thereby kill them.

The 16th prosecution witness was Abraham Komoko Suma. He is a Police Pilot attached to the Naval Base, Kington in Freetown. He said that on the evening of 23rd July 1974 Allie Stevens went to him at the Navel Base and invited him to accompany him to Murray Town. He and Allie Stevens travelled to Murray Town and went to the residence of the 2nd appellant. On their arrival they meet the following: Staff Sgt Boma, Sgt Kandeh, Sgt Davies, Private Momoh Suma and L/Cpl Kaindeka Seisay. The 2nd appellant turned up later and introduced himself to the witness as an ex-Lieutenant. The 2nd appellant told the witness inter alia that he wanted to stage a revolutionary fight to overthrow the Government and that he had support from the army, the police and civilians. The 2nd appellant told the witness that the soldiers in the house then were representatives of the army. The 2nd appellant asked the witness to assist him to get ammunition, but the witness told him that he had no ammunition and did not have access to the ammunition store. The witness then left, but on his way home he met the 1st appellant who invited him to return to the 2nd appellant's residence. He returned to the 2nd appellant's residence where he found the 2nd appellant and the soldiers previously named. The 1st appellant asked him whether the 2nd appellant had told him anything and he replied that the 2nd appellant had told him about a plan and that he had given him (the 2nd appellant) a suitable reply. The 1st appellant then said that they were engaged in a plan to stage a revolutionary fight to overthrow the Government and that he expected to get support from the army, the police and civilians and requested the witness to assist him to get ammunition. The witness said that his children were ill and that he was planning to visit Samu Chiefdom in the Kambia District. The 1st appellant then handed the sum of Le 80 to the witness and requested him to use the money to purchase ammunition as Samu near the Guinea border. The witness made his trip to Samu and he succeeded in purchasing 75 live rounds of ammunition from border guards. He returned to Freetown on 28th July 1974 and went to the 2nd appellant's house in the evening. He met the 2nd appellant in the house and the following were with him: Staff Sgt Boma, Sgt Kandeh, Sgt Davies and Private Mohamed Amara. He handed the ammunition to the 2nd appellant. The 2nd appellant again appealed to him to join in the plot and promised that he would appoint him officer commanding the Coastal Guard Division of the Police Force if the plan succeeded. The 2nd appellant gave him Le 8 with a request that he should use the money to buy alcohol for the guards guarding the ammunition store at Kington on the night of 29th July 1974 so that when he (2nd appellant) arrived there at about 2am on 30 July 1974 he would find the guards drunk and incapable of resisting him breaking into the ammunition store and taking ammunition therefrom.

The 12th prosecution witness was Alimamy Bakarr Kamara, a fisherman. This witness admitted that in 1971 he was involved in blasting the Hastings Bridge with dynamite. He said on 28 July 1974 the 4th appellant went to his house in Freetown and invited him to his (the 4th appellant's) house.

He said that he accompanied the 4th appellant to his house at Kissy. At the 4th appellant's house, he informed the witness that former detainees, members of the ISU, and the Army had planned to stage a revolution to overthrow the Government on the following Monday at 3am and that they would need his (the witness') help to fire explosives. The 4th appellant promised to secure a job for him after the revolution. They arranged to meet him on the morning of Monday 29 July 1974. The 4th appellant took him to the residence of the 8th appellant where they met some other boys. The 4th appellant left and asked him to wait there. The 4th appellant came back in the evening for a short while. At some stage during the witness's long wait in the house, the 8th appellant told him that his services were required to ignite some explosives in connection with the revolution. The 8th appellant provided some food for the witness and the other boys. Shortly after they had had the meal, a Mercedes Benz car C.7917 was parked in front of the house. The 8th appellant then instructed the witness and the other boys to board the car and they were driven to City Hotel, Freetown and then to Murray Town. At Murray Town the 6th appellant asked them to alight from the Mercedes Benz car and board a Peugeot car WR.6368 which he was driving. The board the Peugeot car and the 6th appellant drove them to the Murray Town Cemetary. At the cemetary the 6th appellant told the 8th appellant that he had arrived with the men who knew how to explode dynamite. The 8th appellant then told them that some more people would be arriving and that they should not be afraid when they saw them as they were all the "same people".

Shortly afterward, many people arrived at the cemetary. Some changed into army uniform in the cemetary. The witness saw many people there including the 2nd appellant in khaki uniform, the 4th appellant, the 6th appellant, the 7th appellant, the 8th appellant, and Allie Stevens, who was in uniform. The 2nd appellant then said that that was the night to execute the plan to overthrow the Government of Sierra Leone and appealed to them not to be afraid. The 2nd appellant then instructed the first group to attack the residence of the Hon C A Kamara-Taylor at Spur Road, Wilberforce with explosives and kill him. The 2nd appellant handed some explosives to the group and said that the first blast should go off at 3.30 am. The 2nd appellant wished the group good luck and they left. The 2nd appellant instructed the second group to go to the Magazine at Tower Hill, Freetown, kill the guards, break open the Magazine with explosives and take the ammunition. The 2nd appellant gave the group some explosives and wished them good luck. The 2nd appellant instructed the 3rd group to go to the residence of Hon S I Koroma at Hill Station, attack his residence with explosives and kill him. The 2nd appellant handed some explosives to the group and wished them good luck. The witness was assigned to the fourth group. The 2nd appellant instructed them to go to the residence of the Force Commander Brigadier Momoh, attack the residence with explosives and kill him. The 2nd appellant told them that explosives were already in the Force Commander's compound and that the 2 soldiers would show them where the explosives were concealed. At Spur Road on their way to the Force Commander's residence, they heard a blast and as they approached the residence they heard another blast. They were frightened, alighted from the car and ran into the bush and he eventually found his way to Freetown.

The 15th prosecution witness was Maligie Conteh, a professional motor driver. He said that on the night of 29th July 1974, the 3rd appellant saw him at Gloucester St, Freetown and asked him for his taxi. When he told the 3rd appellant that his taxi was not available, the 3rd appellant asked him to accompany him to Kissy so that he could drive a car for him (the 3rd appellant). The 3rd appellant drove him to Kissy and showed him a car which he said he wanted him (the

witness) to drive. The car was a Mercedes Benz car C.7917. The 4th appellant and the 9th appellant were standing near the car. The 9th appellant was the owner of the car.

The 3rd appellant instructed the witness to drive the car to the 8th appellant's residence and then to City Hotel. The 4th appellant told him that he should collect some people who were waiting at the 8th appellant's residence. The 3rd appellant and the 4th appellant instructed the witness to take the people he collected at the 8th appellant's residence to the City Hotel. The witness drove the car to the 8th appellant's residence where he collected seven boys including Alimamy Bakarr Kamara (PW12) and drove to City Hotel and parked the car outside the Hotel. Later the 6th appellant and the 8th appellant arrived in Peugeot car WR.6368 driven by the 6th appellant. The 8th appellant and 6th appellant instructed the witness to drive the car to Murray Town and he drove the car with the passengers to Wilton Street, Murray Town and waited for them there. Later the 6th appellant arrived by car WR.6368. The 6th appellant instructed the boys to transfer from the Mercedes Benz car to car WR.6368 which he the (6th appellant) was driving and he (the 6th appellant) drove off. The witness then drove the Mercedes Benz car to City Hotel and parked it there.

The 9th prosecution witness was George Cornelius Ojumirie Cole. He said that on the night of Sunday 28th July 1974 at Kissy, the 8th appellant told him that he and others including soldiers and policemen had made plans to overthrow the Government and that he (the witness) should not be afraid to do anything he would ask him to do. The witness said that on the night of 29th July 1974 the 8th appellant asked him to go to Murray Town and wait for him there and gave him (the witness) the sum of Le 1 for his fare.

According to Abu Turay (PW5) the 6th appellant bought 61 sticks of dynamite from him and others at Lunsar in the Port Loko District in July 1974. According to Sorie Kanu (PW6) the 6th appellant bought dynamite fuses from him at Lunsar in July 1974.

Hon C A Kamara-Taylor was the 2nd prosecution witness. He said inter alia that at about 3.30 on the morning of Tuesday 30 July 1974 he was awakened by a loud blast. He said that there were three explosions at his official residence that night and that he and his family succeeded in escaping to the bush. The residence and furniture were severely damaged as a result of the explosions. Several sticks of unexploded dynamite were found in the compound of the residence on the following morning.

The appellants have appealed against their conviction on points of law and have applied for leave to appeal on questions of fact and on mixed law and fact. The court heard the applications at the same time as the appeal and treated them as appeals. Some of the appellants applied for leave to appeal against sentence and we granted them leave. Many grounds of appeal were filed on behalf of each appellant but they were substantially identical with those filed on behalf of the other appellants. So that except in one or two cases it will be convenient to deal with the appeals of all the appellants together.

Counsel for the appellants submitted that s 3(1)(a) of the Treason and State Offences Act 1963, the sub-section under which the appellants were charged, creates one offence and not two offences as laid in the indictment. Indeed this was an attack on the indictment itself because the indictment charged the appellants with two distinct offences under the subs-section. Sub-section 3(1) reads:

> 3(1) A person is guilty of treason and shall on conviction be liable to suffer death who either within Sierra Leone or elsewhere:
>
> (a) prepares or endeavours to overthrow the Government by unlawful means; or

(b) prepares or endeavours to carry out by force any enterprise which usurps the executive power of the State in any matter of both a public and general nature; or

(c) incites or assists any person to invade Sierra Leone with armed force or unlawfully to subject any part of Sierra Leone to attack by land, sea or air, or assists in the preparation of any such invasion or attack; or

(d) in time of war and with intent to give assistance to the enemy, does any act which is likely to give such assistance.

It is important to note that in Count 1, the appellants are charged with *preparing* to overthrow the Government by unlawful means while in Count 2 they are charged with *endeavouring* to overthrow the Government by unlawful means. The contention of counsel to the appellants is that the appellants should have been charged with one offence of "prepare or endeavour" to overthrow the Government by unlawful means. My understanding of the ordinary meaning of "prepare" is "to make ready, put in readiness" and my understanding of the ordinary meaning of "endeavour" is "to make an effort to do or effect to make an effort to strive". In my opinion, "preparing" and "endeavouring" are two distinct acts. One may prepare without endeavouring. Endeavour connotes something more than prepare. When one endeavours one has crossed the stage of preparing. Also, when the sub-section is considered as a whole, it is quite clear that the use of the word *or* in (a), (b) and (c) of the sub-section is disjunctive and not conjunctive. To take sub-section 1(c) the words used are "incites or assists". It cannot be seriously argues that "incites" and "assists" mean one and the same thing. In their ordinary meaning "incites" means "to urge, to stir up", while "assists" means "to help, to aid". It is quite clear therefore that the two words mean quite different things. Further more the words "incite" and "assist" (or aid) have assumed technical meaning in the field of criminal law. They are two distinct concepts of law. To incite a person to commit a crime is to solicit him to commit the crime, while "to assist" him to commit a crime is to aid him to commit the crime. Hence "incite" is usually associated with the "inchoate" common law offence of incitement while assist is usually associated with principals in the second degree in felony and treason. In my opinion therefore the words "incites" or "assists" create two distinct offences. Similarly the words "prepare or endeavour" in sub-section 3(1)(a) and (b) create two distinct offences. I derive support for this conclusion from the decision of this court in *Lansana & Ors v R* (1970-71) ALR (SL) 186 where it was held inter alia that the words "prepare" and "endeavour" appearing in ss 3 and 4 of the Treason and State Offences Act 1963 refer to separate offences, which should be charged separately, and a count which joins them will be bad for duplicity. In that case Tambiah JA who delivered the leading judgment said inter alia at p 222:

> "If it was the intention of the legislature that preparing and endeavouring should be regarded as one act, the conjunctive "and" would have been used and even then for the reasons stated preparation is a different actus reus from endeavouring".

This decision was followed in this court in *Juxon-Smith v The State* (1970-71) ALR (SL) 361. I derive further support from Ghana, where the provision relating to treason under the Criminal Code 1960 is identical with s 3(1) of the Treason and State Offences Act 1963. The relevant section of the code is s 180(1) and in sub-sections (a), (b) and (c) thereof the words "prepare or endeavour" are used and in sub-section (d) thereof the words "incites or assists" are used. My researches reveal that the words "prepare or endeavour" have been accepted by the courts of Ghana as creating two distinct offences and not one offence (see *State v Otchere & Ors* (1963) 2 GLR 463).

Another ground of appeal relating to the indictment was formulated thus:

"That overt act 1 in counts 1 and 11 of the indictment was wrongly laid as an overt act of treason as it does not support the count".

This ground was filed by Counsel on behalf of all the appellants but only Mr Halloway argued it. Mr Halloway submitted that conspiracy could only be laid as an overt act where the offence charged is conspiracy to commit treason. He relied upon *State v Otchere & Ors* (1963) 2 GLR 463 and the judgment of Tambiah J in *Lansana & Ors v R* (1970-71) ALR (SL) 186. In my opinion, neither of these cases support Mr Halloway's submission. I have read the judgment of *State v Otchere & Ors* and nowhere in that judgment have I found any statement or proposition remotely supporting Mr Halloway's submission. I suspect that Mr Halloway was carried away by the fact that the accused persons were charged with conspiracy to commit treason in one count of the indictment and with the treason of endeavouring to overthrow the Government in another count. But it would appear from p 470 pf the report that the same overt acts were relied on to sustain both the counts and that conspiracy was laid as an overt act in respect of both counts. Mr Halloway relied upon the following passage in the judgment of Tambiah JA in *Lansana & Ors v R*, above at p 253:

"To revert back to the example given, if a person convened a meeting at which a number of people were going to plan out a campaign to overthrow the Government by unlawful means but the meeting did not take place, the convener would be guilty of doing a preparatory act which is necessary for plotting together to overthrow the Government by unlawful means. If they all attended the meeting and plotted together and conspired to make an endeavour to overthrow the Government by unlawful means, they commit the offence of preparing to overthrow the Government by unlawful means punishable under s 3(1)(a) of the Act. After the meeting if anyone strives to do any acts to overthrow the Government by unlawful means then they will be guilty of endeavouring to overthrow the Government."

I fail to see how this passage supports Mr Halloway's submission. On the contrary it supports the proposition that conspiracy can be laid as an overt act of both species of treason created by s 3(1)(a) of the Treason and State Offences Act 1963, ie, (i) preparing and (ii) endeavouring. It seems to me that what the learned Justice of Appeal was saying is that on the basis of the example given, if a meeting was held and plans were made to overthrow the Government that would be an overt act of preparing to overthrow the Government, and that if after the meeting any of the participants strove to do any act in furtherance of the plan that would be an overt act of endeavouring to overthrow the Government by all the participants. Quite clearly, the act of one participant which the learned Justice characterised as amounting to endeavouring, would be evidence of conspiracy against all the participants at the meeting on the well-known principle that the acts and declarations of one conspirator in furtherance of the common design is evidence against all the other conspirators.

Having disposed of the two cases relied upon by Mr Holloway, I now propose to consider the ground of appeal on its merits.

The necessity for overt acts in informations or indictments for treason was first introduced by the Treason Act 1351. According to that statute that requirement related only to the species of treason as "being adherent to the King's enemies in his realm" and not to any other species of treason. That species of treason was required to be proved by "open deed", which in more modern times has now been defined as "any act manifesting the criminal intention and tending towards the accomplishment of the criminal object" (see *R v Thistlewood* (1820) 33 St Tr 681). In the 17th and 18th centuries the courts by judicial interpretation extended the requirement of an overt act to all species of treason. But the Treason Act 1351 is no longer applicable in Sierra Leone. It was repealed by s 19(2) of the Treason and State Offences Act 1963. The question then is: are overt acts necessary in indictments for the species of treason created by the Treason

and State Offences Act 1963? That is an arguable question, but it is not necessary to decide it in this appeal because the State chose to lay overt acts in the indictment in the instant case.

The next question I have to consider is whether conspiracy could be laid as an overt act of the treason of preparing or endeavouring. Considering may be defined as the agreement of two or more persons to do an unlawful act or to do a lawful act unlawfully. It was defined by Willes J in delivering the unanimous judgment of the Kings Bench whose opinion of himself and four other judges of the Kings Bench whose opinion had been asked for by the House of Lords in *Mulcahy v The Queen* (1863) LR 3 HL 306 at p 317 as follows:

> "A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if unlawful, punishable if for a criminal object or for the use of criminal means."

It is necessary to emphasise that the ingredients of conspiracy are (i) the actus reus, ie the agreement, (ii) two or more persons agreeing, (iii) the purpose agreed upon and (iv) the mens rea. So the persons agreeing need not do anything beyond the agreement. In the *Queen v Aspinall* (1876) 2 QBD 48 Brett JA said at p 58:

> "The crime of conspiracy is completely committed, if it is committed at all, the moment two or more have agreed that they will do, at once or at some future time certain things. It is not necessary in order to complete the offence that any one thing should be done beyond the agreement. The conspirators may repent and stop, or may have no opportunity, or may be prevented, or may fail. Nevertheless, the crime is complete; it was completed when they agreed."

If A does an act preparatory to overthrow the Government by unlawful means, there could be no doubt that that would amount to treason under s 3(1)(a) of the Treason and State Offences Act 1963. Similarly if B does an act in an endeavour to overthrow the Government by unlawful means, there could be no doubt that that would be treason under the Treason and State Offences Act 1963. And quite clearly the respective acts of A and B can be laid as overt acts of the treason of preparing and treason of endeavouring. In my opinion it will be illogical in the extreme and contrary to common sense, if A and C agreed to do the same act done by A, and B and C agreed to do the same act done by B and it was said that the agreements were not overt acts of the respective species of treason. In this connection the words of Willes J in *Mulcahy v The Queen*, supra at p 317 are appropriate. He said:

> "The number and the compact give weight and cause danger, and this is more especially the case in a conspiracy like those charged in this indictment. Indeed, it seems a reduction to absurdity that procuring a single stand of arms should be a sufficiently overt act to make the disloyal design indictable, and that conspiracy with a thousand men to enlist should not."

I think that it is important to state that the forbidden acts under s 3(1)(a) of the Treason and State Offences Act 1963 are (i) the preparation and (ii) the endeavour, to overthrow the Government by unlawful means.

By its very nature, conspiracy is a preparatory act, ie, preparatory to the commission of an unlawful act. So if persons agree to overthrow the Government by unlawful means, that agreement is a preparatory act. That preparatory act amounts to a preparation to overthrow the Government by unlawful means under s 3(1)(a), or may amount to an endeavour to overthrow the Government by unlawful means under s 3(1)(a), or to both. In my view therefore an agreement to overthrow the Government by unlawful means is a sufficient overt act of the two

species of treason created by s 3(1)(a). I therefore hold that the overt acts charging conspiracy in counts I and II of the indictment were properly laid.

I now turn to the grounds of the appeal relating to the summing up.

A ground of appeal common to Messrs Yilla, Halloway and Conteh is in the following terms:

> "That the learned trial judge misdirected the jury by directing them that the common criminal design in this case is the preparation and endeavour to overthrow the Government of Sierra Leone".

The ground is relative to the overt acts charging conspiracy, ie, overt act 1 in counts I and II. The overt acts allege that the appellants conspired to overthrow the Government of Sierra Leone in that they agreed to achieve certain stated objects. The passage in the summing up complained of is as follows:

> "The common criminal design in this case is the preparation and the endeavour in counts I and II to overthrow the Government of Sierra Leone".

Learned counsel submitted that the common criminal design is the overthrow of the Government. As pointed out earlier the forbidden acts under s 3(1)(a) of the Treason and State Offences Act 1963 are (i) preparing and (ii) endeavouring, to overthrow the Government by unlawful means. The actual overthrow of the Government is not mentioned as a forbidden act. The reason for this is obvious. It is to nip in the bud any plot to overthrow the Government, because if the plot succeeds and the Government is overthrown, the plotters invariably form the Government. In which case it might be too late to try any of the plotters for treason. And it is unrealistic to expect the plotters to try themselves for treason. I quote a passage quoted by Willes J in *Mulcahy v The Queen*, supra, at p 321 which states this view in different language:

> "But those who conspire against the constituted Government connect in their sanguine hope the assurance of impunity with the execution of their crime, and would justly deride the mockery of an association which could only be preferred against them when their banners were unfurled and their force arrayed. It is reasonable therefore, as it is conformable to the usages of every country, to place conspirators against the sovereign power upon the footing of actual rebellion, and to crush those by the penalties of treason who, were the law to wait for their opportunity, might silence or pervert the law itself."

But that does not mean that the actual overthrow of the Government by unlawful means is not treason under s 3(1)(a) of the Treason and State Offences Act 1963. In my opinion, it is treason because the overthrow must of necessity involve some element of preparation and endeavour.

To return to the subject of common design, I am of the view that the common design is not the overthrow of the Government by unlawful means but the preparation or the endeavour to overthrow the Government by unlawful means. As I indicated earlier an agreement to overthrow the Government by unlawful means is an act of preparation and amounts to the forbidden act of preparing to overthrow the Government by unlawful means under s 3(1)(a) and depending on the terms of the agreement may also amount to the forbidden act of endeavouring to overthrow the Government by unlawful means under s 3(1)(a). In my opinion therefore it is perfectly right to say that the common design in a charge of preparing to overthrow the Government is the preparing, and in a charge of endeavouring to overthrow the Government , is the endeavouring. In the circumstances, I see nothing wrong in the direction the learned judge gave to the jury on this issue.

Another ground of appeal filed on behalf of all the appellants is in the following terms:

"That the learned trial judge failed as he was bound in law to do to withdraw from the jury:

(i) the objects laid in the overt act 1 of counts I and II of the indictment were not proven;

(ii) the objects laid in overt act 1 and counts I and II that were irrelevant to the issue;

(iii) the overt acts laid in the indictment which were not proved;

(iv) the overt acts which were not laid in the indictment."

Much of the argument turned on (i) and the complaint was that object (c) in overt act 1 of count I and object (d) in overt act 1 of count II were not proved. The two objects referred to, ie, (c) and (d) are identical and they read as follows:

"To seize and take control of the Sierra Leone External Communications establishment in Wilberforce."

I agree that the evidence in support of those objects is rather vague and unsatisfactory. Bassie Kargbo (PW10) did say that at a meeting held at the 2nd appellant's residence on Saturday 27th July 1974, Staff Sgt Boima suggested that at the time of the operation, Private Momoh Suma should put off the Exchange at Wilberforce in order to render it out of action. Early in his summing up, the learned judge told the jury that the evidence was not clear as to the External Communications establishment referred to. And at the final stages of his summing up, the learned judge directed the jury not to consider object (d) of overt act 1 of Count II as the evidence was insufficient. As I have pointed out object (d) in overt act 1 of count II, which the learned judge told the jury not to consider, is identical with object (c) in overt act 1 of Count I. The jury must be credited with some intelligence and in my opinion they must have known that the judge was referring to the identical objects in the two counts. In my judgment therefore the learned judge effectively withdrew both objects from the jury. With regard to (iii) of the ground, I have carefully read through the evidence and have come to the conclusion that there was sufficient evidence to support all the other overt acts laid in the indictment. I find no merit in (ii) and (iv) of the ground. Indeed two of the counsel for the appellants did not argue them and the two who did, did not argue them with much conviction. This ground therefore fails.

Learned counsel for the appellants also submitted that the learned trial judge misdirected the jury by saying that the President is the Government of Sierra Leone. Various contentions were put forward as to the meaning of "Government". Mrs Taqi said that it meant the President, the Executive and Parliament, Mr Yilla said that it meant the President, Parliament, the Judiciary, Government Departments and statutory corporations, and Mr Halloway said that it meant the President, the Cabinet, Ministers, Deputy Ministers and public officers subordinate to the President when they are exercising executive functions. The learned judge gave the direction complained of when he was directing the jury on the meaning of the various words used in s 3(1)(a) of the Treason and State Offences Act 1963. The Act itself does not define the word "Government". The learned judge therefore referred to the definition given in s 4 of the Interpretation Act 1971 which is as follows:

"Government means the Government of Sierra Leone (which shall be deemed to be a person) and includes, where appropriate, any authority by which the executive power of the State is duly exercised in a particular case."

The learned judge then referred to s 16(1) of the Constitution 1971 which provides inter alia that the President shall be the Supreme Head of State and Commander-in-Chief of the Armed Forces, that he shall embody the national unity and ensure the continuance of the State and that he shall be the Guardian of the Constitution and as such shall be the Guarantor of the national independence, of the integrity of the territory etc. The learned judge then referred to s 49 of the Constitution which provides as follows:

"(1) Subject to the provisions of the Constitution, the executive power of Sierra Leone shall vest in the President and may be exercised either by him directly or through members of Cabinet, Ministers, Deputy Ministers or public officers subordinate to him.

(2) In exercise of any function conferred upon him by the Constitution or any other law, the President shall, unless otherwise provided, act in his own deliberate judgment and shall not be obliged to follow the advice rendered by any other person or authority."

On the basis of his interpretation of these various sections the learned judge then told the jury that "Government" in the context of s 3(1)(a) meant President. The question is, was the learned judge right?

In my opinion the word "Government" does not have one invariable or universal meaning. It has different meanings. This may account for the variety of definitions given by learned counsel for the appellants. Various definitions have been given to the word "Government" by textbook writers and in dictionaries, for example, a body of persons, or system or the act of governing, the governing power in a State, the body of persons charged with the duty of governing, the authority directing the affairs of men in a community, rule and administration, the governing body in a continuous entity or as the group of administrators currently in power, the form by which a community is managed, eg, democratic government. In the *Dictionary of English Law* by Earl Jowitt it is defined as:

"that form of fundamental rules and principles by which a nation or state is governed; the State itself; the principal officers of the State."

This is how Adenola CJF defined "Government as by law established" in *DPP v Chike Obi* (1961) All Nig Rep 186 at 194:

"There can be little doubt that throughout the Constitution "Government as by law established" means a body of persons who for the time being collectively exercise the executive authority of the Government of the Federation of Nigeria, considered as a *collective* body and independently of the persons it consists of. This body of persons may change but it remains the centre of gravity as the body administering the Government."

Again in one sense "Government" may mean the Executive, the Judiciary and the Legislature, in another sense it may mean the Executive and in yet another it may mean the system of Government. It has different meanings I have said all this to emphasise that the word "Government" must be interpreted according to the context in which it is used. Section 4 of the Interpretation Act defines it as the Government of Sierra Leone and adds that it includes, where appropriate, any authority by which the executive power of the State is duly exercised. I think that the emphasise in that definition is on the words "executive power". In my opinion therefore the Government means the person or body which exercises executive power in the State. Who then exercises executive power in Sierra Leone? For the answer to that question I turn to the Constitution. Section 49(1) of the Constitution (already set out) provides that executive power shall vest in the President. It also provides that the President may exercise executive power directly or through members of the Cabinet, Ministers, etc. I interpret "through" in the context of s 49(1) to mean "by the instrumentality or agency of". In my opinion therefore when the Cabinet, Ministers, etc exercise executive power they do so as agents of the President. According to the Constitution, the President appoints Ministers and members of the Cabinet and he may dismiss them at any time. The President is not obliged to consult or obtain the advice of any person or authority in appointing or dismissing Ministers and members of Cabinet. The Cabinet is the President's Cabinet, the Ministers are the President's Ministers. They are his agents in the exercise of executive power. It is the President's government. But that does not

mean that an act would amount to treason only if the preparation or endeavour is to the overthrow the President himself. Any preparation or endeavour to overthrow the President himself or any person or authority is a preparation or endeavour to overthrow the Government as represented by the President. I am of the opinion therefore that strictly speaking, according to the Constitution, the President is the "Government". In the circumstances I hold that the learned judge's direction to the jury was right and this ground therefore fails.

Another ground of appeal filed on behalf of all the appellants is that the learned judge was wrong in law in directing the jury that the Treason Act 1695 was no longer applicable in Sierra Leone. The argument is based on s 74 of the Courts Act 1965 which provides:

> "Subject to the provisions of the Constitution and any other enactment, the common law, the doctrines of equity and the statutes of general application in force in England on the 1st day of January 1880 shall be in force in Sierra Leone."

Learned counsel pointed out that the Treason Act 1695 was not one of the English Treason Act repealed by s 19(2) of the Treason and State Offences Act 1963 and submitted that the Treason Act 1695 was a statute of general application and therefore it still applies in Sierra Leone. I have examined and considered the wording of the Treason Act 1695. In s 1 of the Act it is provided that the object of the Act is for the better regulation of trials of persons prosecuted for "high treason" and misprison of "such treason". The words "high treason" appears also in ss 2 and 3 of the Act, and the words "such treason" appear in several other sections. Judging from the wording of the Act, I am of the opinion that the Act was passed for the regulation of trials of the species of treason created by the Treason Act 1351 and the subsequent Treason Acts. The Treason Act 1351 and certain other statutes relating to treason were repealed by the Treason and State Offences Act 1963, which also created new species of treason applicable in Sierra Leone. In my opinion the procedure laid down by the Treason Act 1695 is not applicable to the new species of treason created by the 1963 Act. We have our own statute, (ie the Criminal Procedure Act 1965) regulating procedure in criminal trials in Sierra Leone and that is the statute which, in my opinion, must be followed in trials for treason under the 1963 Act. It is also interesting to note that certain Imperial Treason Acts made applicable in Sierra Leone by virtue of s 74 of the Courts Act 1965 were not repealed by the Treason and State Offences Act 1963. I make mention of two of them, ie, (i) the Treason Act 1702 s 3 which makes it high treason to attempt by overt acts to hinder the succession to the Crown as limited by the Act of Settlement 1701; (ii) the Treason Act 1795 s 1 which provides that persons who shall compass, imagine, invent, devise or intend the death, restraint, etc of his Majesty or his heirs shall be deemed traitors and shall suffer pains of death and also lose and forfeit as in cases of high treason. This Act was made perpetual by the Treason Act 1817.

So it would seem that by virtue of s 74 of the Courts Act 1965 those two Imperial statutes are still in the statute book of Sierra Leone, and the two offences created by them may still be prosecuted in Sierra Leone. If I am right, then, to say the least, the position is anomalous, because Sierra Leone became a Republic on 19th April 1971 and consequently as from that date citizens of Sierra Leone and others in Sierra Leone ceased to owe allegiance to the British Sovereign. It would therefore be ludicrous and inconsistent with our present constitutional status to prosecute any person in Sierra Leone now for offences which have as their basis allegiance to the British Sovereign. Similarly, the Treason Act 1695 may still be in the statute book of Sierra Leone, but in my opinion it is certainly not applicable to the species of treason created by the Treason and State Offences Act 1963. In my opinion, if the Treason Act 1695 is still applicable in Sierra Leone, it is applicable only to trials under the unrepealed Imperial Treason Acts, eg, the Treason Act 1702 and the Treason Act 1795. I therefore hold that the direction of the learned trial judge was right.

Another ground of appeal common to all the appellants is in the following terms:

"That the learned trial judge throughout his summing up usurped the function of the jury in deciding and / or tending to decide questions of fact meant for the jury."

The submissions under this ground fall under four main heads:

(i) Accomplices

(ii) Corroboration

(iii) Credibility

(iv) Conspirators.

Under the first head (ie, accomplices) it was submitted that the learned judge usurped the function of the jury to determine questions of fact by naming certain prosecution witnesses and to telling the jury that they were accomplices. This is the first passage complained of:

"It is my duty to tell you that some of those witnesses are in law accomplices. These witnesses are accomplices. Who are the witnesses called by the prosecution that can be regarded as accomplices? They are PW3 Morlai Sallieu Kamara, PW5 Abu Turay, PW6 Sorie Kanu, PW9 George Cornelius Ojumirie Cole, PW10 Private Bassie Kargbo, PW11 Saidu Brima, PW12 Alimamy Bakarr Kamara, PW15 Maligie Conteh and PW16 Abraham Kemoko Suma. These are all accomplices."

The learned judge then explained to the jury the meaning of an accomplice and ended by saying:

"You can take it from me as a matter of law there is evidence which shows that these witnesses I have mentioned are accomplices but it is within your province to consider whether that is so."

I see nothing wrong in principle for a judge to tell the jury that a particular witness is an accomplice, especially so if the evidence of the witness is unfavourable to the accused person. I feel that such a direction is favourable to the accused person and he cannot complain about it. I think that the learned judge was most favourable to the appellants in this case because he named PW5 Abu Turay, PW6 Sorie Kanu and PW15 Maligie Conteh as accomplices. On the evidence I doubt whether these three witnesses were accomplices, but the appellants cannot very well complain because thereby the learned judge imposed an extra unwarranted burden on the prosecution, which was most favourable to the appellants.

In any case, the learned judge told the jury that it was within their province to decide which witnesses were accomplices. The views I have expressed are supported by the dicta of Finnemore J in his judgement in *R v Chrimes* (1959) 43 Cr App R 149 (CCA) at pp 152-153:

"The first point is: was Pritchard an accomplice, and in strict law that means an accomplice to the crime of murder? That would have been a matter for the jury to decide, and the judge might have said to the jury that they should consider whether Pritchard was an accomplice or not to the murder, which would have depended entirely on the evidence of the appellant, and that if they had to treat his evidence as that of an accomplice it needed corroboration. The judge did not do that. He did something which, it seems to us, was more favourable to the defence, because he told them that Pritchard was an accomplice, true an accomplice to the thieving, but also to be treated as an accomplice in his evidence on the murder."

I therefore find no merit in this complaint.

Under the second head (ie corroboration) the complaint was that in reviewing the evidence the learned judge impliedly told the jury that some witnesses who were accomplices corroborated other witnesses who were also accomplices. I have carefully read through the

judge's summing up and find no substance in this complaint. On the contrary I find that the learned judge gave the proper direction on corroboration over and over again. It is sufficient to quote only one example. He said:

> "In fact it is my duty to warn you and I shall keep on reminding you, that it is dangerous to convict on the uncorroborated evidence of an accomplice. You should look for some independent testimony which tends to show not only that the offence was committed but also that it was committed by the accused."

And on the question of whether one accomplice can corroborate the evidence of another accomplice this is what the learned judge said after referring to the evidence of PW3:

> "Of course it is the evidence of an accomplice and the evidence of an accomplice cannot corroborate the evidence of another accomplice."

Under the third head (ie, credibility), the complaint was that the learned judge told the jury that in his opinion certain witnesses were truthful witnesses. In my opinion there is nothing wrong in a judge expressing his opinion on the truthfulness of witnesses or on other questions of fact, so long as he does so fairly and make the jury understand that they are not bound by his opinion and leaves the issues of fact to them to determine. (See *Davies v R* (1957-60) ALR (SL) 348 CA). In this connection, I adopt the words of Channel J in *R v Cohen & Bateman* (1909) 2 Cr App R 197 (CCA). He said at pp 208-209:

> "In our view, a judge is not only entitled, but ought, to give the jury some assistance on questions of fact as well as on questions of law. Of course, questions of fact are for the jury and not for the judge, yet the judge has experience on the bearing of evidence, and in dealing with the relevance of questions of fact, and it is therefore right that the jury should have the assistance of the judge. It is not wrong for the judge to give confident opinions upon questions of fact. It is impossible for him to deal with doubtful points of fact unless he can state some of the facts confidently to the jury. It is necessary for him sometimes to express extremely confident opinions. The mere finding, therefore, of very confident expressions in the summing up does not show that it is an improper one. When one is considering the effect of a summing up, one must give credit to the jury for intelligence, and for the knowledge that they are not bound by the expressions of the judge upon questions of fact"

Under the fourth head (ie, conspirators), the complaint was that the learned judge referred to the appellants as conspirators. One of the passages complained of may be quoted as an example. The learned judge said:

> "Gentlemen, conspiracy in law persists as long as one or other of the conspirators act in furtherance of a common design for which the agreement was formed. And it is competent for the prosecution to prove isolated acts against different conspirators (for in the instant case conspirators mean the accused persons) to show the steps by which the conspiracy was established and as long as each accused has knowledge of the common purpose and intend to execute it. Each is equally guilty although they may not all have been equally informed of the details. I want you to bear that in mind. It is for you to determine whether the conspirators, in this case the accused persons, act in furtherance of a common design."

Quite clearly in this passage, as well as the others complained of, the learned judge was explaining to the jury the law of conspiracy and the evidence which may be relied on against conspirators. In my opinion, taking the context as a whole, when the learned judge said "in the instant case conspirators mean the accused persons" what he was saying in effect was that the accused persons were persons charged with conspiracy under overt act 1 of Counts I and II. He was saying that when he used the words "conspirators", he was not referring to people generally

but to the persons in the dock who were alleged to have conspired. The learned judge was certainly not telling the jury that the accused had proven to be conspirators.

In my opinion the learned judge at no time during his summing up usurped the function of the jury. On the contrary, I find that throughout the summing up he repeatedly reminded the jury that they were the sole judges of facts and on the few occasions when he expressed his opinion he told them that they were not bound to accept his opinion. This ground therefore fails.

I now propose to deal with two grounds together. One is in the following terms:

> "That the learned trial judge did not adequately and / or fairly put the case for the defence to the jury".

And the other is alleged misdirection on the evidence. The summing up lasted eleven days. In his summing up the learned judge painstakingly put the case of each accused to the jury and directed them on the evidence. The learned judge directed the jury in the clearest terms that the burden was on the prosecution throughout to prove the case against each accused beyond reasonable doubt, that the accused were presumed innocent and that no burden was on any of the accused to prove his innocence. The direction was repeated over and over again during the long summing-up which this lengthy trial made necessary. I am therefore of the view that there is no substance in the complaint about adequacy. On the question of fairness, the complaints were that the learned judge put the case for the prosecution twice and in strong terms and that the learned judge posed rhetoric questions suggesting the guilt of the appellants. With regard to the first complaint, I do not agree that the learned judge put the case for the prosecution strongly or twice over. What the learned judge did was first explain the indictment and the law to the jury, then direct them on the case for prosecution and review the evidence for the prosecution, then put the case and review the evidence on behalf of each accused and finally on the last day of the summing up give what I perceive to be a summary of the law, the case for the prosecution and the defence. I do not think that this was putting the case of the prosecution twice over. In my view, after such a long summing up, the summary at the end must have been of great assistance to the jury. With regard to the complaint about rhetoric questions, two cases were relied on, viz *R v Kwabena Bio* 11 WACA 46 and *Frampton v R* (1917) 12 Cr App R 202.

In the *Kwabena Bio* case the West African Court of Appeal quashed the conviction of the appellant on the ground that the judge had posed a series of rhetoric questions strongly suggesting the guilt of the appellant and had not put the other side of the picture. The court quoted the offending passage. Any reasonable person reading that passage would be left in no doubt that the judge was suggesting the guilt of the appellant. In the *Frampton* case the English Court of Criminal Appeal held that a summing up in effect recommending a verdict of guilty which does not adequately put the defence's case will be quashed. In that case the judge told the jury that the accused's witness was evidently lying and warned them not to accept his evidence. He said that the witness had committed perjury and that he was liable to penal servitude for that. He added:

> "It is open to you to find a verdict of not guilty if you can bring it to your conscience to do so".

And to make matters worse, the appellant's wife gave evidence in support of his alibi, but no mention was made of her evidence in the summing up. In view of the circumstances I have just related it is not surprising that the court quashed the conviction.

The questions complained of by counsel were only a handful of isolated questions scattered over a few pages of a summing up running into 804 pages of the record. I have considered the questions complained of and I do not think that any of them suggested the guilt of the appellants. I see nothing wrong in principle in a judge posing questions in his summing up for the jury's consideration. Quite clearly, the decisions in the two cases relied on do not

apply in the instant case. I have carefully read through the summing up and have come to the conclusion that the learned judge gave a summing up which was fair in every respect.

I think that it is necessary to repeat what had been said by judges over and over again that there is no set formula for a summing up. The words of Lord Morris-y-Gest in *McGreevy v DPP* (1973) 1 WLR 276 HL are instructive. He said at p 281:

> "The particular form and style of a summing up, provided it contains what must on any view be certain essential elements, must depend not only upon the particulars features of a particular case but also upon the view formed by a judge as to the form and style that will be fair and reasonable and helpful."

Particulars were supplied in support of the ground of appeal alleging misdirection. I think that the proper approach is to look at the summing up as a whole in determining whether there was a misdirection. I have considered all the passages complained of and have come to the conclusion that, when taken as a whole, the summing up does not contain any misdirection. In this connection, I quote, with approval, the words of Lord Goddard LCJ in *R v Linzee* (1956) 3 All ER 980 at p 982:

> "In every judge's summing up or nearly every judge's summing up if one goes through it with a magnifying glass some sentence can be found of which one can say that it is not quite accurate or that something else ought to have been said. The fact is that one should not look at the summing up in that way. The summing up must be taken as a whole and it must be seen that there is no misstatement of law."

I now proceed to consider the general ground of appeal alleging that the verdict is unreasonable and cannot be supported having regard to the evidence. But before doing so I should like to state that there were a few other grounds of appeal against conviction which I think do not merit consideration.

On the general ground, I propose to consider the case of each appellant separately. I would at the outset make a general observation that this court is not entitled to reverse the verdict of a jury unless no reasonable jury properly directed could have returned that verdict. We are not entitled to substitute our views for the verdict of the jury. We should take the verdict of the jury, which is one of guilty and which means that the jury were satisfied that the accused did commit the offence. The dicta of Lord Morris-y-Gest in *McGreevy v DPP* (1973) 1 WLR 276 HL are relevant. He said at p 281:

> "The solemn function of those concerned in a criminal trial is to the clear the innocent and to convict the guilty. It is, however, not for the judge but for the jury to decide what evidence is to be accepted and what conclusion should be drawn from it. It is not to be assumed that members of a jury will abandon their reasoning powers and, having decided that they accept as true some particular piece of evidence, will not proceed further to consider whether the effect of that piece of evidence is to point to guilt or is neutral or is to point to innocence. Nor is it to be assumed that in the process of weighing up a great many separate pieces of evidence they will forget the fundamental direction, if carefully given to them, that they must not convict unless they are satisfied that guilt has been proved and has been proved beyond all reasonable doubt."

The first appellant is a medical doctor. He is a former Minister of Finance and acted as Prime Minister on several occasions. He resigned from the Government in 1970.

According to the evidence for the prosecution he was one of the ringleaders of the plot. He attended several meetings at the 2nd appellant's residence at which details of the plan to overthrow the government were discussed. He actively participated in the discussions. He also held a meeting with some soldiers at 60, Kissy Road Freetown where the plan was discussed.

At the end of the meeting he gave the sum of Le 100 to the soldiers. He also procured PW16 (Abraham Komoko Suma) to purchase ammunition for him, and he was at Murray Town cemetary on the night of 29 July 1974 when the four groups were dispatched to attack the various targets with dynamite. He made a statement to police which was admitted in evidence. He gave evidence on oath at the trial. There was ample evidence against the first appellant on which the jury could convict on both counts, and by their verdict it must be presumed that they did not accept his defence. In the circumstances we cannot, in my judgment, interfere with the jury's verdict and I would accordingly dismiss his appeal against conviction.

The second appellant is a former Lieutenant in the Sierra Leone army. He retired from the army in 1972. According to the evidence for the prosecution, he was one of the ringleaders of the plot and the director of operations. Several meetings at which he was present were held at his residence and at which details of the plan to overthrow the government were discussed. He actively participated in the discussions at each meeting. He procured several soldiers, ex-servicemen and members of the ISU and others to join in the plot. He also attended several meetings at PZ compound where details of the plan to overthrow the government were discussed and at which soldiers were present. He actively participated in the discussions at these meetings. He also attended the meeting at 60, Kissy Road, Freetown at which the plan was discussed with some soldiers. He also attended the meeting at Mammy Yoko Street, Freetown. He also arranged with soldiers to procure ammunition and vehicles from the army to be used in the operations. The ammunition procured by PW16 was handed to him. He was at the Murray Town cemetary on the night of 29 July 1974, divided the men into groups, distributed dynamite to them and gave instructions to each group. In addition he made a statement to the police, which was admitted in evidence. In his statement he confessed his involvement in the plot. In his defence, he made an unsworn statement from the dock. The evidence against the 2nd appellant was overwhelming and in my opinion, no reasonable jury properly directed could have failed to convict him on both counts. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 3rd appellant is a public relations consultant. He was former Minister of Information and Broadcasting in the Sierra Leone Government. According to the evidence for the prosecution, he attended the meeting held at the 9th appellant's residence at Kissy with some soldiers and others. At that meeting the subject of uniforms for ex-servicemen who would take part in the operations was discussed and he provided Le 200 for the purchase of the uniforms. He was at the 2nd appellant's residence on the night of 29 July 1974 before the group moved to the Murray Town cemetary and he was also at the cemetary that night. He also procured the services of PW15 (Maligie Conteh) who drove the car which conveyed PW12 (Alimamy Bakarr Kamara) and others to Murray Town on the night of 29 July 1974. He made a statement to the police, which was tendered in evidence. He gave evidence on oath and called witnesses. There was ample evidence against the 3rd appellant on which the jury could convict on both counts, and by their verdict it must be presumed that they did not accept his defence. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 4th appellant is a businessman and a former member of the House of Representatives. According to the evidence for the prosecution, he was one of the ringleaders of the plot. He recruited PW3 (Morlai Sallieu Kamara) to join the plot and attended several meetings at the 2nd appellant's residence at which details of the plan were discussed. He also attended a meeting at the PZ compound at which the progress of the plan was discussed with some soldiers and others. He procured PW16 (Alimamy Bakarr Kamara) to go to Murray Town cemetary on the night of 29 July 1974. He admitted going to Mange in the Port Loko District with other persons to test the dynamite. He was at the 2nd appellant's residence and at the Murray Town cemetary on the night of 29 July 1974. He made a statement to the police, which was admitted in

evidence. In his statement he confessed his involvement in the plot. He made an unsworn statement from the dock. The evidence against the 4th appellant was overwhelming and in my opinion, no reasonable jury properly directed could have failed to convict him on both counts. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 5th appellant is a former Force Commander of the Sierra Leone army. According to the evidence for the prosecution he attended a meeting at the 2nd appellant's residence in July 1974 at which the progress of the plan was discussed. At that meeting and on another occasion, he expressed his impatience at the slow progress in the execution of the plan. He was at the 2nd appellant's residence and the Murray Town cemetary on the night of 19 July 1974. On that night he gave assurance that he had contacted some ex-soldiers and that outside help would be forthcoming if necessary. He made a statement to the police which was tendered in evidence. He gave evidence on oath and called witnesses. There was ample evidence against the 5th appellant on which the jury could convict on both counts, and by their verdict it must be presumed that they did not accept his defence. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 6th appellant was at all material times employed by the 1st appellant as a secretary/accountant. According to the evidence for the prosecution, in July 1974 he bought sticks of dynamite and some dynamite fuses from Lunsar. Later that month he drove the 4th and 8th appellants to Mange where the dynamite was tested. A meeting was held at this residence at 60, Kissy Road, Freetown at which details of the plan were discussed and in which he participated and assured the soldiers present that they had the support of many civilians who would join the soldiers to overthrow the government. Another meeting was held at his residence at which the plan was discussed and in which he participated. He attended meetings at the 2nd appellant's residence at which details of the plan were discussed and in which he actively participated. He also attended two meetings at PZ compound Wilberforce at which details of the plan were discussed with soldiers and others. He was at the residence of the 2nd appellant and at the cemetary on the night of 29th July 1974 and in fact he drove PW12 and others to the cemetary. He drove the car that conveyed the group that went to the residence of Hon CA Kamara-Taylor. He made a statement to the police which was tendered in evidence. He made an unsworn statement from the dock. There was ample evidence against the 6th appellant on which the jury could convict on both counts and by their verdict it must be presumed that they did not accept his defence. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 7th appellant is a former Member of the Police Force, a former journalist but is now a businessman. According to the evidence for the prosecution he attended two meetings at the residence of the 2nd appellant at which details of the plan were discussed. He was at the 2nd appellant's residence and at the Murray Town cemetary on the night of 29th July 1974. He was also a member of one of the groups that was sent to attack one of the targets on the night of 29 July 1974. He made a statement to the police which was tendered in evidence. He gave evidence on oath. There was ample evidence against the 7th appellant on which the jury could convict on both counts and by their verdict it must be presumed that they did not accept his defence. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 8th appellant is a motor driver. According to the evidence for the prosecution he went to Mange with the group that went to test the dynamite. He told PW9 about the plan to overthrow the government, assured him that they had the support of soldiers and policemen and solicited his support. He gave PW9 some money on the night of 19 July 1974 to pay his fares to Murray Town. PW12 and the other men assembled at his residence on 29 July 1974. He was at

the cemetary on the night of 19 July 1974 and in fact he produced the dynamite. At the cemetary he said that he had taken some men there who were experts at exploding dynamite. He made a statement to the police which was tendered in evidence. He made an unsworn statement from the dock. There was ample evidence against the 8th appellant on which the jury could convict on both counts and by their verdict it must be presumed that they did not accept his defence. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 9th appellant is a businessman and owner of car C.7917. According to the evidence for the prosecution a meeting was held at his residence at which the 3rd appellant and some soldiers were present. The subjects discussed were the progress of the plan to overthrow the government and the provision of uniforms for ex-servicemen who would take part in the operation and he participated in the discussion. The 3rd appellant produced the sum of Le 200 which the 9th appellant in turn handed to one of the soldiers for the purchase of the uniforms. On the night of 29th July 1974 he permitted the 3rd appellant to use his car, and the car was used to convey PW12 and others to Murray Town. He made a statement to the police, which was tendered in evidence. He made an unsworn statement from the dock. There was ample evidence against the 9th appellant on which the jury could convict on both counts and by their verdict it must be presumed that they did not accept his defence. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 10th appellant is a storekeeper. According to the evidence for the prosecution he attended a meeting at PZ compound at which soldiers and others were present. The subject discussed was the progress of the plan to overthrow the government. He was at the 2nd appellants residence and the Murray Town cemetary on the night of 29th July 1974. He was a member of the group that left the Murray Town cemetary to attack the residence of the Hon CA Kamara-Taylor. He made a statement to the police, which was admitted in evidence. He gave evidence on oath and called witnesses. There was ample evidence against the 10th appellant on which the jury could convict on both counts and by their verdict it must be presumed that they did not accept his defence. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 11th appellant is a businessman. According to the evidence for the prosecution, sometime in July 1974 he visited the residence of the 2nd appellant. A discussion about the plan to overthrow the government took place in a room between the 2nd appellant, the 5th appellant, some soldiers and others. When PW10, one of the participants at the meeting came out of the room and into the parlour he saw the 11th appellant and others in the parlour. PW10 said that the 4th appellant heard what was discussed in the room. He made a statement to the police in which he said that in July 1974 the 4th appellant told him about an impending plot to overthrow the government, but that he told the 4th appellant that he was not interested. He also said that on 29 July 1974, the 1st appellant went to him and told him to keep indoors that night as the soldiers would be staging a coup d'etat. He also admitted that he gave lift to one Fulla and Munu to Magburaka Hospital where Kaindeke Seisay was admitted. He also made an unsworn statement from the dock. I have given careful consideration to the evidence against the 11th appellant. There is no evidence that he participated in the discussion going on in the room whilst he was in the parlour of the 2nd appellant's house. The evidence of PW10 that the 11th appellant heard what was discussed in the room might have been only an opinion or an assumption. I think that it is unsafe to base a conviction on such unsatisfactory evidence. I think that the admissions contained in his statement to the police may amount to the offence of misprison of treason but certainly not to treason. In my judgment it is unsafe to uphold the conviction of the 11th appellant for treason. In the circumstances, I would quash the conviction on both counts and set aside the sentences.

The 12th appellant is a former Paramount Chief. According to the evidence for the prosecution he was one of the architects and ringleaders of the plan. He attended three meetings at PZ compound Wilberforce at which details of the plan were discussed. He suggested that dynamite could be used in the coup d'etat and that they could be obtained from Lunsar. He was at the 2nd appellant's residence on the night of 29th July 1974. He made a statement to the police, which was admitted in evidence and in which he admitted his involvement in the plot. He made an unsworn statement from the dock. The evidence against the 12th appellant was overwhelming and in my opinion no reasonable jury properly directed could have failed to return a verdict of guilty against him on both counts. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 13th appellant is a Sub-Inspector of Police attached to the ISU. According to the evidence for the prosecution he attended a meeting at Mammy Yoko Street, Freetown at which the plan to overthrow the government was discussed. He asked the 2nd appellant for money to be used to solicit support for the plan. He also attended a meeting at PZ compound Wilberforce at which details of the plan including the quantity of ammunition available for the operations were discussed. He actively participated in the discussion. He made a statement to the police, which was admitted in evidence and in which he admitted attending the two meetings. He made an unsworn statement from the dock. The evidence against the 13th appellant was overwhelming and in my opinion no reasonable jury properly directed could have failed to return a verdict of guilty against him on both counts. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 14th appellant is a Sergeant in the Police Force attached to the ISU. According to the evidence for the prosecution, he attended a meeting at Mammy Yoko Street, Freetown at which the plan to overthrow the government was discussed. He also attended a meeting at PZ compound Wilberforce at which details of the plan including the quantity of ammunition available for the operations were discussed. At that meeting he said inter alia that he and others had succeeded in getting many members of the ISU to support the plan and urges that the plan should be seriously pursued. On one occasion he and PW10 met at the Central Police Station and they discussed the plans to overthrow the government. He made a statement to police which was tendered in evidence. In his statement he admitted attending the two meetings. He made an unsworn statement from the dock. The evidence against the 14th appellant was overwhelming and in my opinion no reasonable jury properly directed could have failed to return a verdict of guilty against him on both counts. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

The 15th appellant is a cook. At all material times he was employed by the manager of PZ at his residence at Wilberforce. According to the evidence, the 15th appellant provided a meeting place at PZ compound Wilberforce for the plotters. Several meetings were held at the meeting place provided by him at which soldiers were present and at which detailed discussion of the plan to overthrow the government took place. He actively participated in the discussions. He also attended a meeting at the 2nd appellant's residence at which details of the plans to overthrow the government were discussed. He was at the 2nd appellant's residence and the Murray Town cemetary on the night of 29th July 1974. He made a statement to the police which was tendered in evidence and in which he admitted his involvement in the plot. The evidence against the 15th appellant was overwhelming and in my opinion no reasonable jury properly directed could have failed to return a verdict of guilty against him on both counts. In the circumstances, we cannot, in my judgment, interfere with the verdict and I would accordingly dismiss his appeal against conviction.

It only remains to deal with the grounds of appeal relating to sentence. A ground of appeal filed on behalf of all the appellants is to the effect that the death penalty is not mandatory under s 3 of the Treason and State Offences Act 1963. Learned counsel for the appellants submitted that the use of the words "shall be liable to suffer death" in the section instead of the words "shall suffer death" made the death penalty discretionary and not mandatory. The learned Solicitor-General submitted that the use of the word "liable" does not make any difference and that the death penalty is mandatory. I do not agree with the learned Solicitor-General's submission. I think that the word "liable" must have some significance and meaning in the context in which it appears. I understand the word "liable" in its ordinary meaning to mean "exposed to possibility or risk". So when it is provided that a person "shall be liable to suffer death" it means that he runs the risk of suffering death or there is a possibility that he shall suffer death. In my opinion this imports the element of discretion. In *James v Young* (1884) 27 Ch D 652 North J said at p 655:

> " ... but when the words are not "shall be forfeited" but "shall be liable to be forfeited" it seems to me that what was intended was not that there should be an absolute forfeiture, but a liability to forfeiture, which might or might not be enforced."

In *Re Loftus-Otway* (1895) 2 Ch 235 Stirling J said a p 240:

> "The words are not merely "be deprived" but "be deprived or be liable to be deprived" and there is a contrast between being deprived and being liable to be deprived. The words "be liable to be deprived" are meant to add something to that which goes before .... It seems to me that the latter words must be read as including acts which so far as the person who committed them is concerned would put it out of his power to have any voice in the matter, and would leave it with a Court of Justice to say whether or not he is to be deprived."

A comparison of statutes where the words "shall be liable" and "shall suffer death" are used should throw some light on the subject. I give only a few examples. The Offences Against the Person Act 1861 s 1 (which is still applicable in Sierra Leone) provides:

> "Whosever shall be convicted of murder *shall suffer death* as a felon" (emphasis supplied).

There can be no argument that it has always been accepted that under this section the death penalty is mandatory for murder. The Treason Act 1975 s 1 provides that any person convicted of the offences created by that section "*shall suffer* pains of *death* as in cases of high treason" (emphasis supplied). Again there is no doubt that the death penalty has always been mandatory for high treason under the English Treason Acts. On the other hand, the Larceny Act 1916 (which is adopted law in Sierra Leone by virtue of the Imperial Statutes (Criminal Law) Adoption Act (Cap 27)) s 24 provides that a person convicted of the offence created by that section (ie, sacrilege) *shall be ... liable* to penal servitude for life" (emphasis supplied). Also s 25 of the same Act provides that a person convicted of the offence created by that section (ie, burglary) *shall be ... liable to penal servitude for life*"(emphasis supplied). Of course "penal servitude for life" has been amended to read "life imprisonment". There is no doubt that it has always been accepted in England and in Sierra Leone that life imprisonment is not a mandatory sentence under the two section referred to. Trial judges have always had a discretion as to whether the person convicted should be sentenced to life imprisonment, or a lesser term of imprisonment.

In my opinion therefore the words "shall suffer death" import mandate whilst the words "shall be liable" import a discretion. I derive support for this view from two East African cases. In *Opoya v Uganda* (1967) EA 752 the East African Court of Appeal held inter alia that the words "shall be liable on conviction to suffer death" provide a maximum sentence only and that

the courts have a discretion to impose a sentence of death or of imprisonment. Sir Clement De Lestang VP who delivered the judgment of the court in that case said at p 754:

> "We consider such to be the correct approach to the construction of the words "shall be liable on conviction to suffer death" especially when contrasted with the words of s 184 which are "shall be sentenced to death". Consequently construing s 273(2) in the ordinary meaning of the words used therein free from authority we would have no hesitation in holding that the sentence of death which it prescribes is discretionary and not mandatory. To hold otherwise would be to give an unnatural meaning to the words of the section and we can see no compelling reason to do so."

In *Mattaka and Ors v Republic* (1971) EA 495 three of the appellants were convicted of treason under s 39 of the of the Tanzania Penal Code the relevant part of which reads:

> "Any person who, being under the allegiance to the United Republic ... and manifests such intention by publishing any writing or printing or by any overt act or deed whatsoever shall be guilty of treason and *shall be liable* on conviction *to suffer death*" (emphasis supplied).

The trial judge sentence the three appellants to life imprisonment. They appealed to the East African Court of Appeal against conviction and sentence. This is what Sir William Duffus P said about the sentence in delivering the majority judgment of the court at p 512:

> "These three appellants have, however, been found guilty of treason, one of the most serious crimes in any country. The maximum penalty imposed by the legislature may be a sentence of death but in this case the Chief Justice, in the exercise of his discretion, imposed the less severe sentence of imprisonment for life ... we can find no reason to interfere with the exercise of the Chief Justice's discretion in this matter and the appeal against sentence is dismissed."

In my judgment therefore the sentence of death under s 3 of the Treason and State Offences Act 1963 is discretionary and not mandatory. The trial judge has a discretion as to whether to pass the death sentence or not.

Since writing this judgment, I have had the opportunity of reading the separate judgment written by my learned brother, Ken During JA and I would like to make a few observations on that part of it dealing with the penalty under s 3(1)(a) of the Treason and State Offences Act 1963.

My learned brother referred to the decision of the East African Court of Appeal in *Kichanjele s/o Ndamunga v R.* (1941) 8 EACA 64 and part of the judgment. I think that it is important to state that the correctness of that decision has been doubted by the East African Court of Appeal and that it has not been followed in subsequent cases. This is what the East African Court of Appeal said about that decision in the judgment of the court in *Opoya v Uganda* (supra) at p 754:

> "It was, however, decided by this court in *Kichanjele's* case that the words "shall be liable to" in the Kenya Penal Code are mandatory. This court is, as a general rule, bound by its previous decision but in a criminal case where the liberty and indeed the life of the subject is at stake, it will not follow a previous decision which it considers to be wrong. *Kichanjele's* case must therefore be closely examined. It is a case which does not appear to have been fully argued. The appellant was not represented by counsel and the decision, with respect, appears to be somewhat superficial."

The *Mattaka* case, supra, shows quite clearly that the East African Court of Appeal no longer follows the decision of *Kichanjele's* case.

My learned brother said that at common law treason was punishable by death and went on to pose the question whether Parliament could have intended to substitute the discretion of a judge for a mandatory death sentence. With respect, the short answer to that question is that Parliament had expressly made provisions for the punishment of the species of treason created by the 1963 Act and that consequently these provisions have expressly overridden the punishment at common law and under the repealed statutes. He referred to the case of *Samsoondar Ramcharan v The Queen* [1973] AC 414. The important issue in that case was whether the trial judge (in Trinidad and Tobago) could impose a fine for a conviction for receiving stolen property which amounts to a felony under the Larceny Ordinance of that State. Under s 38 of that Ordinance, the court could on a conviction for receiving stolen property amounting to a misdemeanour pass a sentence of imprisonment or instead or in addition thereof impose a fine, but in the case of a conviction for receiving stolen property amounting to a felony, the court could pass a sentence of imprisonment or instead or in addition thereof bind the offender to keep the peace. What the judge did in that case was to impose a fine for a conviction for receiving stolen property amounting to a felony, in the belief that he had a power to do so at common law. The punishment for the felony is clearly laid down in the section and without doubt the judge did not have the power to impose a fine for the felony, as distinct from the misdemeanour. It was held that the judge had no power to impose a fine and that the express terms of the Ordinance overrode any common law doctrine with respect to punishment for the offence. In my opinion that decision supports what I said earlier that the express words of the 1963 Act have overridden the punishment for treason at common law and under the repealed statutes. The decision certainly does not support the proposition that the words of the 1963 Act do not confer on the trial judge a discretion whether or not to pass the death sentence on a person convicted of treason.

Finally my learned brother made mention of the fact that there is provision for the exercise of the prerogative of mercy by the President under the Constitution and expressed the opinion that it could not have been the intention of Parliament to give a trial judge a right to exercise the President's prerogative of mercy. With respect, the question of the prerogative of mercy is irrelevant. And it is erroneous to say that when a judge is exercising a discretion conferred upon him by law he is usurping the prerogative of mercy of the President. The President could still exercise the prerogative of mercy under s 63 of the Constitution whether the sentence passed by a judge is mandatory or discretionary. So where the judge exercised his discretion by imposing the death penalty, as in the instant case, the President could still exercise his prerogative of mercy. Similarly if the judge had, in the exercise of his discretion, passed sentences of imprisonment, the President could still exercise his prerogative of mercy by, for example, granting a free pardon or remitting the whole or part of the punishment.

I have already held that the sentence of death under s 3 of the 1963 Act is discretionary. And if the learned judge had a discretion, it must be presumed that he exercised it by imposing the maximum penalty provided under the section, ie by passing the sentence of death.

The 6th, 7th and 13th appellants appealed on the ground that the sentence was manifestly excessive. In my opinion the learned judge must have formed the view that having regard to the evidence and the nature of the plot, the extreme penalty was warranted both as a deterrent and also as a punishment of the convicted persons. I see no valid reason for interfering with the exercise of the learned judge's discretion and I would accordingly dismiss the appeals against sentence.

KEN DURING JA: The appellants were charged with treason contrary to s 3(1)(a) of the Treason and State Offences Act 1963 and convicted and each sentenced to death. Against such conviction all appellants have appealed to this court and it was strenuously argued by counsel

that the section under which the appellants were charged gave the learned trial judge discretion to sentence the appellants to a term of imprisonment.

Several grounds of appeal were argued which have been dealt with by the presiding judge and I would proceed to deal with some of the grounds argued.

Counsel for the appellants argued that the Act for Regulating of Trials in Cases of Treason and Misprision of Treason 1695 7 and 8 Will 3, c 8 applies in this country and that the procedure to be followed in the instant case was that contained in the Act.

The learned Solicitor–General stated that the prosecution proceeded on the footing that the 1695 Act applied. The question as to whether this Act applies was recently considered by the Judge-Advocate, Mr Smythe QC in court martial proceedings brought by the State against Kaloko and others. Kaloko and others were tried and convicted for treason under the Treason and State Offences Act 1963.

The learned Judge Advocate held the view that the 1695 Act applied and not the Sierra Leone Criminal Procedure Act 1965. He held that the 1695 Act unlike other United Kingdom enactments, for example, The Treason Act 1351 and the Official Secrets Act were not repealed.

Treason at common law was an offence and was either high treason or petit treason. Before the Treason Act 1351 was enacted there was no precise definition. That Act defined what was petit treason and what was high treason.

The 1695 Act enacts that:

> "From and after the 25th day of March, 1696, all and every person or persons whatsoever, that shall be accused and indicated for high treason, whereby any corruption of blood etc."

The Act goes on to refer to "such treason." It is interesting also to read the preamble of the said Act which reads:

> "Whereas nothing is more just and reasonable, than that persons prosecuted for high treason and misprision of treason, whereby the liberty lives" etc.

In my view the 1695 Act was meant to regulate the procedure in trials for high treason. With the repeal of the United Kingdom Acts, the 1695 Act remains in the statute book but does not regulate anything. The offences created in the Treason and State Offences Act 1963 in my opinion, are not of the same specie of offences which the 1695 Act formerly regulated, that is to say offences known as high treason. The proper procedure to follow in this case in my opinion is that laid down in the Criminal Procedure Act 1965 No 32 of 1965.

It was contended it was wrong for the prosecution to have laid the two counts in the indictment as the section under which the appellants were charged, s3(1)(a) of the Treason and State Offences Act 1963, created one offence. This has already been held not to be so. See *Lansana & Ors v R* (1970-71) ALR (SL) 186 and also *Juxon-Smith v The State* (1970-71) ALR (SL) 361.

Counsel of the appellants complained that the defence of alibi was not adequately put to the jury. In my opinion the learned trial judge did properly put the defence of alibi to the jury and explained to them the overhaul burden which rests squarely on the prosecution.

It was strenuously argued by counsel for the appellants that the learned trial judge usurped the function of the jury. In my opinion before this court could arrive at a decision that there was such usurpation it must be clear from the summing-up that the judge was inviting the jury to bring one and only one verdict, in this case, a verdict of guilty and that the judge did not consider and or put the accused's defence to jury. In relating the law to the facts a judge may have cause to make his own comments or observations so long as the comment is in no way

unfair. A judge is not precluded from putting a rhetorical question to the jury. In my view it could not be said that the learned trial judge usurped the function of jury. The judge lengthily, adequately and fairly put the case of the defence.

Counsel argued that the learned trial judge was wrong in directing the jury that the Government of Sierra Leone is the President. It was argued that the Government of Sierra Leone includes the Cabinet, Parliament and any authority by which executive power is exercised in a particular case.

"Government" by s 4 of the Interpretation Act No 8 of 1971 is defined as follows:

> "Government" means the government of Sierra Leone which shall be deemed to be a person and includes, where appropriate any authority by which the executive power of the State is duly exercised in a particular case".

By s 49 of the Constitution executive power vests in the President and he is free to exercise any of the executive functions.

In my view the President is the sole repository in law of the executive power who has authority to delegate executive functions in a particular case.

In the colonial days, the King or Queen was in theory in law the sole repository of executive powers which was exercised through a Governor and immediately before this country became a Republic the function was carried out by Governor-General.

Until comparatively recently the term "Government" has rarely appeared in statutes and then in a context which assumes that all must know its meaning. In Britain, governmental power as a matter of legal form is vested in the Queen or exercised on the advice of her Ministers or by them in her name and it is applicable to her prerogative powers as well as statutory. In the United States of America where there exists a Presidential system, executive power is vested in the president who is not a member of Congress and whose continuance in office does not depend on the support of the majority of the House of Representatives.

The President of Sierra Leone is not a Member of Parliament and his continuance in office does not depend on the support of the majority of the members of Parliament.

The Constitution (Amendment) No 3 Act 1973 in my view makes it clear that the executive power is vested in the President and makes it in my opinion absolutely clear that the President is the Government of Sierra Leone and sole repository executive power. Section s 1(i) of the Act reads:

> "There shall be a Supreme Head of State, Commander-in-Chief of the Armed Forces and Grand Commander of the Order of the Republic who shall be known as the President of Sierra Leone and who is referred to in this Constitution as the President. He shall embody the national unity and ensure the continuance of the State. As Guardian of the Constitution he shall be the guarantor of National Independence, of the integrity of the Territory, of respect for Treaties and International Agreements. He shall be the Fountain of Honour."

In my opinion the learned trial judge was right in directing the jury that the President of Sierra Leone was in law the Government of Sierra Leone.

I have considered the case against the 11th appellant and also his statement to the police and agree with my brother judges that he should be acquitted and discharged on both counts. Mens rea is an essential element in conspiracy which was not established by the prosecution. I would allow the appeal by the 11th appellant.

Counsel for the appellants have argued that the judge had a discretion under the section the appellants were charged with to impose sentence of imprisonment in place of death, that the

judge was not bound to sentence the appellants to death. Section 3(1)(a) of the Treason and State Offences Act reads as follows:

> "A person is guilty of treason and shall on conviction *be liable to suffer death* who either within Sierra Leone or elsewhere (a) prepares or endeavours to overthrow the Government by unlawful means."

Great stress was placed on the words "shall be liable" by counsel for the appellants and it was submitted that it was the intention of the legislature to give the judge discretion as to whether or not he should impose a sentence of death. They argued that the section was so equivocal that a liberal construction should be given to the words and in any case benefit of the doubt should be given to the accused persons. They argued that it was not mandatory for the judge to impose a sentence of death and that be words "shall be liable to suffer death" is to interpreted to mean "likely to suffer death."

In the recent court martial case the *State v Kaloko & Ors* the Judge-Advocate Mr Smythe QC considered this question and ruled that the section made it mandatory on the tribunal to impose a sentence of death. The accused in that case were charged under the same section under which the appellants were charged. The Judge-Advocate held that if it was the intention of the legislature to make the death penalty discretionary it would have said so. He referred to s18 of the Treason and State Offences Act 1963 which enacts:

> "Any person convicted of an offence under this Act for which no specific punishment is provided shall be liable to fine not exceeding Le1,000, 000 or imprisonment not exceeding 5 years or both such fine and such imprisonment."

The learned Judge-Advocate referred to the meaning of the word "liable" in the Oxford Concise Dictionary as meaning "legally bound", "answerable for", "under obligation" and "that may be bound". He also referred to Collins Encyclopaedia and Dictionary where it is stated liable means "obliged in law or equity", "to compel". When Judge-Advocate Smythe gave his ruling there had been no decision on this point in the High Court or Court of Appeal.

There have been decision of Courts of Appeal in East Africa touching and concerning interpretation of the words "shall be liable to suffer death" where the Courts have held that such words import a discretion to impose sentence of death or of imprisonment. These cases have already been referred to by the presiding judge: The case of *Opoya v Uganda* (1967) EA 752 and the case of *Mattaka and Ors v Republic* (1971) EA 495. The former case was one of robbery with violence and a previous decision of the Court of Appeal referred to in its decision, *Kichanjele s/o Ndamunga v R.* (1941) 8 EACA 64 was not applied and not followed. That case was one of treason under s 26 of the Penal Code of Kenya which provided that a person convicted of treason "shall be liable to suffer death". The court in that case said:

> "A consideration of the various sections shows, in our judgment that the use of the words "shall be liable to" does not import that the sentence mentioned in any particular section in which these words occur is merely a maximum and that the court may impose any lesser sentence below the court indicated."

The East African Court of Appeal decisions are of persuasive authority and not binding on this court and as has been said earlier this question has not been considered and a ruling made by this court.

Maxwell on Interpretation of Statutes 11th Edition has this to say at page 87:

> "One of these presumptions (presumptions against implicit alteration of law) is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms of by clear implication, or in other words, beyond the immediate scope and object of the statute. General words and phrases,

therefore however wide and comprehensive they may be in their literal sense must, usually, be construed as being limited to the actual objects of the Act, it will be "perfectly monstrous" to construe the general words of the Act so as to alter the previous policy of the law. In construing the words of an Act of Parliament we are justified in assuming the legislature did not intend to go against the ordinary rules of law, unless the language they have used obliges the court to come to the conclusion that they did so intend."

To arrive at a true construction of the section under which the appellants were charged as to whether the judge had discretion or not, in my opinion it is not enough to consider some of the words or phrases in isolation or out of context. To arrive at a true construction of the section one should look for the intention of parliament intended to give power to the judge to sentence for term of years it did say so clearly in the Treason and State Offences Act 1963 under s 4 which deals with treason felony and s 18 which deals with penalties generally. Under s 4 a person convicted for treason felony shall be liable to imprisonment not exceeding ten years. In the case of *Samsoondar Ramcharan v The Queen* [1973] AC 414 on appeal from the Court of Appeal of Trinidad and Tobago which went to the Privy Counsel the appellant was convicted for receiving stolen property in circumstances which amounted to a felony contrary to s 34(1) of the Larceny Ordinance (Chapter 4, No 11). The trial judge sentenced him to pay a fine. A few days later the judge became aware that the validity of his sentence was questionable, as it appeared he had no power in the court under the statutes to impose a fine for felony. The Court of Appeal held that the judge had no power to impose a fine and substituted a sentence of imprisonment. On appeal to the Privy Council it was held that the law of Trinidad and Tobago in respect of receiving stolen property for which the appellant was convicted was contained in the Larceny Ordinance, which defined the crime and prescribed the punishment, that the express term of the ordinance overrode any common law doctrine with respect to punishment for that offence and the trial judge had no power to impose the fine.

In that case Sir Victor Windeyer, reading the advice of the Board said inter alia:

"Whether or not felonies were by the common law punishable by a fine their Lordships, in agreement with the Court of Appeal, consider that the law of Trinidad and in respect of the receiving stolen goods is now to be found in the Larceny Ordinance which came into force in 1919. This superseded earlier legislation in force in the colony and any lingering common law doctrine concerning the receipt of stolen property. It defines the crime and prescribes the punishment. That punishment in the case of felonies receiving as described is imprisonment for a maximum term of ten years."

At common law treason was punishable by death. Could it possibly be said reading through the Act that it was the intention of Parliament to give a judge discretion to substitute in place of death penalty a sentence for a term of imprisonment, which could be one day? I do not think so. Death is indivisible. Sentence for life or definite term of imprisonment is divisible. Death is one event and I fail to see how "death" and term of years could be sui generis. If Parliament had wanted to give the judge discretion to substitute a sentence of term of imprisonment for that of death it would have said so clearly. The section clearly defines the crime and prescribes the punishment.

Section 216 of Criminal Procedure Act No 32 of 1965 provides that death sentence shall not be pronounced or recorded against a person convicted of any offence if it appears he was under the age of 18 years but in lieu thereof shall sentence him to be detained during the President's pleasure. In this connection where Parliament's intention was that another sentence shall be imposed it did say so in the enactment.

Section 218 of the Criminal Procedure Act No 32 of 1965 makes it obligatory on the trial judge to make a report in writing to the President containing recommendations or observations on the case which he thinks fit to make where he has pronounced the sentences of death.

There is provision for the exercise of the prerogative of mercy by the President under our Constitution. Under our Constitution there is opportunity for the Head of State to look into individual cases assisted by the committee of mercy where a prisoner has been sentenced to death. It is my considered opinion that the sentence is mandatory.

It certainly was, in my opinion not the intention of Parliament to give a trial judge a right to exercise the President's prerogative of mercy under the section the appellants were charged and convicted.

I agree that the appeals of the other 14 appellants be dismissed.

Reported by Victoria Jamina and Anthony P Kinnear