GBLA v THE STATE

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COURT OF APPEAL FOR SIERRA LEONE, Criminal Appeal 2 of 1976, Hon Mr Justice S B Davies JA, Hon Mr Justice S C E Warne JA, Hon Mr Justice C S Davies JA, 1 December 1976

[1] Criminal Law and Procedure – Murder – Directions to jury – Mere reproduction of text book definition of malice aforethought – No explanation of the definition or application to the facts – Duty of judge to explain applicable principles of law and how to apply law to the facts

[2] Criminal Law and Procedure – Murder – Directions to jury – Whether trial judge should have directed jury on matter of insanity where no suggestion appellant insane – Judge should not direct jury on hypothetical questions of law

[3] Criminal Law and Procedure – Murder – Directions to jury – Relationship between provocation and retaliation a factor to be considered by jury when deciding whether provocation enough to cause a reasonable man to do as the accused did

[4] Criminal Law and Procedure – Murder – Failure by trial judge to invite jury to consider verdict of manslaughter – Circumstances of case necessitated invitation to jury to consider verdict of manslaughter

The deceased wrote to the appellant on behalf of a third party seeking payment of debts owing. The appellant took exception to the wording of the letter and confronted the deceased, which resulted in a verbal exchange between the two men at the appellant's house. The appellant struck the deceased under the chin in the presence of a number of witnesses and then took him to another room in his house. Witnesses then reported hearing the sound of a fall and the deceased was found on the floor where the appellant was trying to hit him. When the appellant was prevented by witnesses from doing so, the deceased made unsuccessful attempts to stand up and was observed to be bleeding around the nose, face and part of his hard. He was treated by the local dispenser but his condition worsened and he died two days later. The appellant alleged that the deceased had slapped him, resulting in the appellant retaliating and the deceased falling to the ground. The appellant was convicted of murder.

On appeal, the appellant argued that a proper direction by the trial judge on the act and intention of the appellant would not have produced a verdict of murder. He contended that the trial judge's direction relating to malice aforethought was defective in that he merely reproduced the text book definition of malice aforethought and never assisted the jury by explaining the definition or applying it to the facts. The appellant further alleged that the trial judge erred by directing the jury on the matter of insanity, when there was no suggestion that the appellant was insane. It was also contended that the trial judge erred because, in directing the jury on the issue of provocation, he invited them to take into account the amount of force used by the appellant.

Held, per C S Davies JA, allowing the appeal and substituting a verdict of manslaughter:

1. The trial judge's direction to the jury relating to malice aforethought was defective in that he merely reproduced the text book definition of malice aforethought and never assisted the jury either by explaining the definition or by applying it to the facts. It is the duty of the judge to explain in simple language the principles of law applicable to the case and

how to apply the law to the facts. *Kargbo v R* [1968-69] ALR (SL) 354 applied; *Sumara v R* [1970-71] ALR (SL) 316 referred to.

2. As it had never been suggested that the appellant was insane at the time of the events leading to the death of the deceased, the trial judge ought not to have directed the jury on this matter. A judge should not direct the jury on hypothetical questions of law as doing so may have the effect of confusing the jury. *Bangura v R* [1968-69] ALR (SL) 214 applied. *Feika v R* [1968-69] ALR (SL) 342, *R v Bah* [1968-69] ALR (SL) 30 and *Amara v R* [1968-69] ALR (SL) 220 referred to.

3. The correct manner to refer to the relationship between provocation and retaliation in summing-up is as a factor to be considered by the jury when deciding whether the provocation was enough to cause a reasonable man to do as the accused did. The trial judge erred by putting the relationship between the provocation and the retaliation as a separate and distinct third requirement for the jury to consider and by leading the jury to believe that what they had to consider was the force with which the deceased fell as a consequence of the retaliation rather than the form the retaliation took. *Brown v R (1972) 56 CAR 564* followed.

4. The trial judge should have assisted the jury by directing them to apply the principles he was enunciating to all the circumstances of the case. The jury should have been given the opportunity of deciding whether the words and actions of the deceased were enough to arouse sudden passion leading to loss of self-control by reason of provocation. *Amara v R [1968-69] ALR (SL) 220* followed.

5. Having regard to the circumstances leading to the death of the deceased, the trial judge ought to have invited the jury to consider a verdict of manslaughter.

Cases referred to
Amara v R [1968-69] ALR (SL) 220
Bangura v R [1968-69] ALR (SL) 214
Brown v R (1972) 56 CAR 564
Feika v R [1968-69] ALR (SL) 342
Kargbo v R [1968-69] ALR (SL) 354
R v Bah [1968-69] ALR (SL) 30
Sumara v R [1970-71] ALR (SL) 316

Appeal
This was an appeal to the Court of Appeal for Sierra Leone by the defendant, David Pareke Gbla, against a conviction for murder in the High Court on 16 December 1975. The facts appear in the following judgment.

Dr A Conteh and Mr H Ahmed for the appellant.
Solicitor-General for the State.

CONSTANT S DAVIES JA: At a session of the High Court sitting in Bo the appellant was on the 16th day of December 1975 convicted of the murder of one Joseph Bindi and sentenced to death by hanging. It is against this conviction that he has appealed to this Court.

The prosecution's case was that the second prosecution witness, one Sam Smart a trader, asked the deceased Joseph Bindi to write to the appellant, who was one of his debtors, requesting him to pay what he owed. The letter which was ultimately written by the deceased and sent to the appellant reads:

"Dear Mr Gbla,

With all your honorable respect I am kindly asking you to settle your arrears to me. The reason is that my customer whom I used to collect goods from has sent us a note that I should collect all his arrears tomorrow without fail.

I remain,

Yours Faithfully,

Mr Smart."

After receiving the letter the appellant took it to Smart, read it out and complained that he took exception to the expression "honorable respect". He wanted to know who had written the letter for Smart. Smart replied that it was he who had asked Bindi the deceased to write it for him. The appellant then invited Smart to come to his house with the deceased. Towards evening of the same day Smart, the deceased and the deceased's wife Agnes Bindi (seventh prosecution witness) went to the appellant whom they found in his room with his wife. He offered them seats which they accepted, then asked Bindi if it was he who had written the letter. The appellant next produced the letter, read it aloud and passed it on to the deceased saying that he took exception to the expression "honorable respect", which he thought was insulting. The deceased replied that it was because the appellant did not understand the language that was why he thought the expression was insulting and went on to advise him to take the letter to the Principal of the local school who would assure him that expression was not insulting. The appellant then told Smart that in future he should not ask such a stupid person as the deceased to write to him.

There then appeared to have been some verbal exchanges between the deceased and the appellant during which the appellant was alleged to have given the deceased a blow under the chin. The appellant then got hold of the deceased and took him out of the room and apparently out of sight of everyone. The sound of a fall was next heard and people rushed to the scene. The first to arrive was Amara Sesay (the sixth prosecution witness) who said that when he got there he found the deceased on the floor and the appellant making an attempt to hit him. He stopped the appellant. He noticed that the deceased who had blood around the nose, face and part of his head was making unsuccessful attempts to rise. Subsequently the deceased was taken to the local dispenser who treated him and sent him home. He grew worse and was taken to the Government Hospital in Bo where he was admitted and where he died two days later. The appellant's statement to the police which was tendered as part of the prosecution's case and which was relied on by the appellant for defence is significant in that it contained the only evidence of what happened after he and the deceased left the room and of how the deceased sustained the injury which ultimately resulted in his death. After narrating his own version of what happened in the room and how they struggled out the appellant continued:

"In the veranda he the deceased slapped me on my jaw, I retaliated and he fell on the ground and got wounded on his occiput. My wife Agnes Gbla and some friends whose names I cannot remember took Joseph Bindi to the dispenser at Njala for treatment. Pa Cook of Njala held me in a bid to stop me giving Bindi further blow."

There was no denial either in the Court below or in this Court that the deceased had died as a result of the act of the appellant. But counsel for the appellant urged that in the light of the evidence a proper direction on the act and intention of the appellant would not have produced a verdict of murder. He stressed three of the points raised in his additional grounds of appeal.

First he complained that the learned trial judge's direction on the law relating to malice aforethought was so defective as to deprive the appellant of the protection of the law to which he is entitled. In arguing the ground of appeal counsel for the appellant stated that the learned

trial judge merely reproduced the text book definition of malice aforethought and never assisted the jury either by explaining the definition or by applying it to the facts. Our examination of the summing-up has proved counsel's complaint to be well grounded. In *Kargbo v R* [1968-69] ALR (SL) 354 at 358 Tambia JA said:

> "He the trial Judge adopted a procedure which has been condemned both by this court and by the Court of Appeal in England. He read passages from Archbold, without analysing the abstruse proposition of law stated therein. Members of the jury are lay men who have no training in the law and are liable to be confused when passages of a textbook are read to them. They will not be in a position to comprehend the difficult questions of law applicable to the facts of the case. It is the duty of the Judge to explain in simple language the principles of law applicable to the case and how to apply the law to the facts."

See also Donald Macauley J in *Sumara v R* [1970-71] ALR (SL) 316.

Secondly, counsel for the appellant contended that learned trial judge confused the jury when he said:

> "Have the prosecution adduced such evidence as to make you feel sure that the accused person was sane at the time he unlawfully killed Bindi?"

At no time in the course of the case did anyone suggest that the appellant was insane when this incident occurred. The learned judge therefore ought not to have directed the jury on this matter. This court has on several occasions pointed out that the judge should not direct the jury on hypothetical questions of law as doing so may have the effect of confusing the jury: *R v Bah* [1968-69] ALR (SL) 30 at 34, *Amara v R* [1968-69] ALR (SL) 220 at p 225, *Feika v R* [1968-69] ALR (SL) 342 at 347 and *Bangura v R* [1968-69] ALR (SL) 214 where Tambia JA said:

> "It is dangerous for judges to embark on a voyage of discovery in order to find possible defenses which are not supported by any evidence. This Court held in *Walker v R* that if judges adopt such a course they will only mislead the jury and confuse their minds."

Another complaint of counsel was that:

> "The learned trial judge erred in law when directing the jury on the issue of provocation he invited them to take into account the amount of force used by the appellant."

The passage of the summing-up referred to reads:

> "It is for you to decide whether such series of acts would amount to provocation as I have explained it to you. Would they be such as to make an ordinary literate man lose his self-control and become so subject to anger and passion as to make him unable to control his actions? If you think they are capable of doing that then the next thing you are to decide is did these acts in fact affect the accused so that he lost his temper to such an extent? Then you have to decide – you have to judge the amount of force used. If you accept his evidence that he hit him and he fell; and if you accept the evidence that he fell down with such force that the sound of the fall was heard some thirty yards away and attracted some people to the scene."

In this passage it does seem to us that apart from, quite wrongly we think, putting the relationship between the provocation and the retaliation as a separate and distinct third requirement for consideration by the jury the learned trial judge further confused the jury by leading them to believe that what they had to consider was the force with which the deceased fell as a consequence of the retaliation rather than the form the retaliation took, in this case a blow with the bare hand. We think that the correct manner to refer to the relationship between

provocation and retaliation in summing-up is as a factor to be considered by the jury when deciding whether the provocation was enough to cause a reasonable man to do as the accused did.

In the case of *Brown v R* (1972) 56 CAR 564 where the complaint was against a summing-up that had offended in a similar manner and where it was argued that if the jury had decided the first two questions in favour of the appellant, that is, that the provocation was such as to cause a reasonable man to react as he did, when they came to deciding the third question they would think that a more stringent test ought to be applied and decide that the retaliation was excessive in relation to the provocation. Talbot J said:

> "We have given this contention careful consideration because we are in agreement with counsel for the appellant that the judge's final statement of the three questions as posed by him was perhaps unfortunate."

We also think that it is unfortunate that the trial judge dealt with this aspect of his direction in the manner he did. Furthermore we think that he should have assisted the jury (local people themselves) by directing them to apply the principles he was enunciating to all the circumstances of this case. Sir Samuel Bankole Jones PJ, as he then was, in the case of *Amara v R* already referred to above at p 224 said:

> "I appreciate that to some people living in a different social setting, with the restraining advantages of education and social pressures, a defence of the kind relied upon by the appellant may amount merely to evidence of provocative incident and nothing more and that such evidence would neither support nor provide material for inferring a loss of control by the appellant either immediately after the provocative incident or subsequently and it could therefore be said that there was not sufficient material to go to the jury on the issue of provocation. The accused in this case was, however a tribesman from the backwoods of Africa and was being tried by his countrymen, who should have been given the opportunity of deciding whether the words and actions of the deceased, another tribesman were enough to arouse sudden passion leading to loss of self-control by reason of provocation. As we cannot say whether the jury would have so found, we will therefore give the benefit of the doubt to the appellant and would substitute a verdict of manslaughter in place of murder."

Expect for a few obvious alterations we whole-heartedly adopt those words.

For yet another reason we shall substitute a verdict of manslaughter and it is this. The evidence, in short, discloses that there was a quarrel followed immediately by a short fist fight (and blows from either side) in which the deceased sustained an injury from which he died. In these circumstances there ought to have been an invitation to the jury to consider a verdict of manslaughter. Throughout the summing-up there never was such an invitation. We have therefore asked whether a reasonable jury properly directed would have brought a verdict of manslaughter. We answer with reasonable certainty that they would have.

We accordingly allow the appeal against conviction, set aside the sentence imposed and substitute a verdict of manslaughter. We vary the sentence to one of 3 years.

Reported by Rebecca K Leah and Victoria Jamina

BANGURA v BANGURA

CA

COURT OF APPEAL OF SIERRA LEONE, Civil Appeal 35 of 1977, Hon Mr Justice KEO During PJ, Hon Mr Justice SCE Warne JA, Hon Mr Justice CS Davies JA, 26 January 1977

[1] Land – Title – Sale of land – Parol contract – No transfer of land in writing – Whether part performance sufficient – Whether deed of transfer executed by deceased vendor's next of kin enforceable – Circumstance in which parol contract for sale of land enforceable

[2] Land – Title – Requirement to show history of ownership of land for 40 years – Vendor and Purchaser Act 1874 s 1

[3] Land – Trespass – Distinction between trespass based on title and trespass based on possession – Standard of proof in action for trespass based on title higher than for action based on possession

The respondent agreed to purchase a piece of land at Main Road, Wellington Village in the Western Area of Sierra Leone from Kebbie Bangura ("the vendor"). He paid Le210 for the land by three installments for which he obtained receipts which he later tore up. The vendor died before he had conveyed the land to the respondent. Subsequently, by a Deed of Agreement, the children of the late vendor purported to transfer the land to the respondent.

The plaintiff made a claim for trespass against the defendant, who constructed a pig's pen on the land and refused to pull it down. The High Court granted this claim and the defendant appealed. The main issues were whether the respondent had ever obtained title to the land and whether the vendor had a title to the land which could have devolved on his personal representatives.

Held, per Warne JA, allowing the appeal:

1. There was no Memorandum in Writing signed by the vendor for the transfer of the land. Although there was evidence that the respondent had part performed the agreement by payment of the sum of Le210 to the vendor, this payment alone and entry into possession did not give the respondent title to the land. The Deed of Agreement executed between the children and the next of kin of the vendor and respondent had no force in law and was unenforceable. It was neither a Memorandum in Writing as required by Section 4 of Statute of Frauds nor was it a Deed of Conveyance as provided for by the Conveyancing and Law of Property Act 1881.
2. There are specific circumstances where a parol contract of sale regarding land is enforceable. These are where:
   (i) the party against whom it is sought to enforce the contract fails to set up the want of writing as a defence to the action;
   (ii) if he has fraudulently prevented the creation of writing evidence;
   (iii) if there has been a parol agreement that the estate which is to be conveyed absolutely to the purchaser shall be held by him on trust by the vendor;
   (iv) if the plaintiff can prove a sufficient act of part performance. None of these circumstances applied in this case.