IN THE SUPREME COURT OF SIERRA LEONE

Cr.App.No.1/79

Between:

The State - Appellant

And

Brima Daboh - Respondent

CORAM:

Hon. Mr. Justice E. Livesey Luke - J.S.C. Ag.C.J.
Hon. Mr. Justice C. A. Harding - J.S.C.
Hon. Mr. Justice O.B.R. Tejan - J.S.C.
Hon. Mrs.Justice A. Awunor-Renner - J.S.C.
Hon. Mr. Justice S. T. Navo - J. A.

N.D. Tejan-Cole Esq., D.P.P. with him Miss Tejan-Jalloh and J.M. Kamanda for Appellants

A.L.O. Metzger Esq. with him Mrs. Hannah Ahmed for Respondent.

JUDGMENT DELIVERED THE 1ST DAY OF NOVEMBER, 1 9 7 9.

LIVESEY LUKE, AG. C.J.:- This is an appeal by the State against the decision of the Court of Appeal given on 19th December, 1978 setting aside the conviction of Brima Daboh (hereinafter referred to as the "Respondent") for Murder by the High Court, sitting at Sefadu on 15th July, 1975.

It will be useful to set out a brief history of this case. The respondent and the deceased were

/2.....

husband and wife. For some months previously the respondent had suspected the deceased of being unfaithful and he had consequently demanded the return of his dowry. The deceased refused to return the dowry, whereupon the respondent threatened on several occasions and took solemn oaths to kill the deceased. According to the evidence led by the prosecution at the trial, on the 16th October, 1974 at Tankoro in the Kono District in broad daylight and in a public place the respondent hit the deceased on the head with an axe. The deceased fell to the ground bleeding profusely from the head and she died immediately afterwards as a result of the wounds inflicted on her by the respondent. After a trial by a Judge (Thompson-Davis J) and a Jury lasting 9 days the Jury on 15th July 1975 returned a unanimous verdict of guilty of Murder and the Judge accordingly sentenced the respondent to death. The respondent appealed to the Court of Appeal on several grounds. When the appeal first came before the Court of Appeal on 19th October, 1978, Learned Counsel for the respondent (the appellant in that Court) applied for and was granted leave to amend the grounds of appeal by substituting three grounds, formulated in notice dated 18th October 1978, for the original grounds. At the outset of his argument, Learned Counsel for the respondent pointed out that the Records did not contain a record of the Summing-up. Whereupon the Court ordered that the Registrar of the Court of

/3.....

Appeal request the trial Judge to state in writing whether or not any direction was made by him for his Summing-Up and if he gave no direction to prepare a statement as soon as possible according to the best of his recollection "in accordance with section 197 of the Procedure Act." The appeal came up for hearing on three occasions thereafter and on each occasion the Court was informed that the order of 19th October 1978 had not been complied with by the Trial Judge. That was the state of affairs on 19th November 1978 when the Court of Appeal decided to proceed with the hearing of the argument.

Learned Counsel for the respondent argued all three amended grounds of appeal together. It will be useful to set them out. They are

> "1. That the Learned Trial Judge erred in law in admitting Ex.9 in evidence at p.16 line 27 to p.17 line 4.
>
> 2. That the Learned Trial Judge erred in admitting hearsay evidence at page 29 lines 15 - 18 and in questioning a witness in such hearsay evidence at page 30 lines 21 - 24.
>
> 3. That there being no record of the summing-up in the case, the Honourable Court is not in a position to determine whether or not the jury was properly guided in arriving at its verdict on essential matters such as the burden and standard of proof, provocation and insanity."

/4.....

In his argument Learned Counsel submitted inter alia that "there being no record of the summing-up of this case the Court is not in a position to determine whether or not the jury was properly guided in arriving at a verdict of guilty or on essential matters such as burden of proof, standard of proof, provocation, self defence and insanity." Learned Counsel conceded that failure to record the summing-up was not necessarily fatal but that where the Court cannot be sure that the jury was properly directed and if properly directed "they may not arrive at the same verdict conviction should be quashed." It is relevant to point out that Learned Counsel for the respondent did not argue the other two grounds i.e. grounds 1 & 2, and must be taken to have abandoned them. Indeed, it is not surprising that he did not pursue them, because, in my opinion, they lacked any merit. In reply Counsel who appeared for the State before the Court of Appeal referred to the provision in the Criminal Procedure Act, 1965 (i.e. S. 197(2) requiring the Trial Judge to prepare a statement of his summing-up and stated that it was regrettable that there was no record of the summing-up and then referred to two decisions of the Court of Appeal dealing with the subject of non-availability of record or statement of summing-up.

The Court of Appeal delivered their considered judgment on 19th December 1978 allowing the appeal and ordering that a verdict of not guilty be entered in favour of the respondent. The Court of Appeal based their decision on the absence of a record or

/5.....

statement of the summing-up. The Director of Public Prosecutions, on behalf of the State, has now appealed to this Court. He has posed a number of questions for our determination. But they all boil down to this!

What approach should the Court of Appeal adopt when a record or a statement of the summing-up by the Trial Judge is not available?

The Court of Appeal in their judgment, after considering Section 197 of the Criminal Procedure Act, 1965 and some decided cases said inter alia -

> "Looking at the records, in our opinion this case called for a careful summing-up. In the absence of a summing-up we do not know for example whether the Learned Trial Judge properly directed the jury on the burden of proof and the standard of proof in a criminal trial before a jury. If not properly directed on onus of proof a jury might think themselves entitled to convict merely because they disbelieve the defence..... we do not know whether the case for the defence was adequately put to the jury and if adequately put whether they would have brought in the same or a different verdict .... This Court regrettably has been deprived of that much needed assistance. In the circumstances there-

/6.....

statement of the summing-up. The Director of Public Prosecutions, on behalf of the State, has now appealed to this Court. He has posed a number of questions for our determination. But they all boil down to this!

What approach should the Court of Appeal adopt when a record or a statement of the summing-up by the Trial Judge is not available?

The Court of Appeal in their judgment, after considering Section 197 of the Criminal Procedure Act, 1965 and some decided cases said inter alia -

> "Looking at the records, in our opinion this case called for a careful summing-up. In the absence of a summing-up we do not know for example whether the Learned Trial Judge properly directed the jury on the burden of proof and the standard of proof in a criminal trial before a jury. If not properly directed on onus of proof a jury might think themselves entitled to convict merely because they disbelieve the defence..... we do not know whether the case for the defence was adequately put to the jury and if adequately put whether they would have brought in the same or a different verdict .... This Court regrettably has been deprived of that much needed assistance. In the circumstances there-

/6.....

fore, it will be both dangerous and unsafe to uphold the conviction because we are not sure that if the jury had been properly directed they would have brought in the verdict they did."

The Learned D.P.P. attacked the approach of the Court of Appeal as being erroneous. He submitted that the Court was unduly influenced in coming to their decision by the absence of a record or a statement of the summing-up and that they applied wrong principles in deciding whether the verdict of the jury should be upheld.

In order to determine the issues raised in this appeal it is necessary to refer to the powers of the Court of Appeal in an appeal against conviction. Those powers are conferred by Section 58 of the Courts Act, 1965 which so far as is relevant reads:-

"58(1) Subject and without prejudice to sub-section (2) the Court of Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable, or cannot be supported having regard to the evidence, or that the judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal

/7.....

61

(2) On an appeal against conviction the Court of Appeal, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, may -

(a) either dismiss the appeal or

(b) order the appellant to be retried by a Court of competent jurisdiction,

If they consider that no substantial miscarriage of justice has actually occurred."

This section clearly limits the powers of the Court in allowing appeals against convictions. It is not on every ground that the Court of Appeal may allow an appeal. The Court of Appeal can allow an appeal only if the complaint against the conviction can be brought within one of the grounds specified in Section 58(1) of the Courts Act, 1965. That is to say that the Court must be satisfied either that the verdict is unreasonable or that it cannot be supported having regard to the evidence or that there was some wrong decision of any question of law in the Court below or there was a miscarriage of justice. It is important to emphasize that all these stipulated grounds relate to what transpired at the trial, not to what happened subsequent to the trial. In the case of miscarriage of justice it must be shown that there was some mistake omission or irregularity at the trial as a result of which the appellant has lost a chance of acquital which was fairly open to him.

The question then arises, is the more non-

/8.....

availability of a record or a statement of the summing-up a permissible ground for allowing an appeal against conviction? The statutory provision dealing with Summing-Up by a Judge in a criminal trial is S.197. It reads:-

> "197(1) When, in a trial by jury, the case on both sides is closed the Judge shall sum up the law and evidence in the case.
>
> (2) Where the Judge gives no directions for the recording of his Summing-Up or of any direction given by him, he shall prepare a statement as soon as possible according to the best of his recollection and, for the purpose of preparing such statement, may consult any notes he may have made for his Summing Up or for any such direction."

The two sub-sections just quoted deal with two different situations. The first provides that the Judge shall sum up the law and the evidence whilst the second provides that where he gives no directions for the recording of his summing-up, he shall prepare a statement of his summing-up as soon as possible after the trial. So the first relates to the proceedings at the trial whilst the second relates to action to be taken after the trial. The different objects of these two sub-sections should be borne in mind in construing them.

With regard to the first sub-section, it seems to me that the provision is mandatory. The Judge has no choice but to sum up the law and evidence to the jury

/9.....

at the close of the case on both sides. The summing-up may be brief or lengthy, depending on the circumstances of the case. But sum up, the Judge must. A summing-up is an essential part of a trial. So the Judge is under a duty to comply with the sub-section. In my opinion failure to sum-up would be an omission or an irregularity amounting to a mis-carriage of justice under Section 58(1) of the Courts Act, 1965.

With regard to the second sub-section, it seems to me that the provision is directory. The fact that the recorded summing-up is not available or that a Judge fails to prepare a statement of his summing-up as soon as possible after the trial, for whatever reasons, does not affect the trial. The production of the recorded summing-up or the prepartion of the statement is not part of the trial. Both are events subsequent to the trial. In my judgment therefore the non-availability of the recorded summing-up or a statement of the summing-up simpliciter cannot be a valid ground on which an appeal can be allowed under S.58(1) of the Courts Act, 1965. The reason for that is that it cannot fit into any of the grounds stipulated under that sub-section. Quite clearly it cannot be categorised under the first three stipulated grounds i.e. (i) unreasonable verdict (ii) cannot be supported having regard to the evidence and (iii) wrong decision of any question of law. The only ground under which it can conceivably be categorised is the fourth i.e. "or any other ground there was a

/10.....

miscarriage of justice". But, as I pointed out earlier, the miscarriage of justice contemplated by the sub-section relates to some mistake, omission or irregularity at the trial, not to some omission after the trial. I derive support for the views just expressed from a number of decisions of the English Courts. I shall refer to only two. In James Elliott v. R. 2 Cr.App.R. 7 171 Channell J., in delivering the judgment of the Court of Criminal Appeal said inter alia at p. 172

> "They amount to this, that the provision of the Statute with regard to there being a shorthand note taken of the proceedings at the trial, is directory only. The absence or insufficiency of a shorthand note is not of itself a ground upon which a prisoner can succeed upon an appeal, nor the existence of a proper note a condition precedent to a good trial."

In Le CAER vs. R. /1972/ 56 Cr.App. R.727, Lord Widgery L.C.J., who sat with four other Judges, in delivering the judgment of the Court of Appeal (Criminal Division) said inter alia at pp.730 - 731:-

> "The fact remains, that we here have no summing-up, and we have to consider what the results will be ..... in other words, the simple fact that there is no shorthand note is not of itself a ground for saying that the conviction is unsafe or unsatisfactory. In order that the appellant may claim that con-

/11.....

clusion he must be able to show something to suggest that there was irregularity at the trial or a misdirection in the summing-up. Unless there is something to suggest that an error of that kind took place, the absence of a shorthand note simpliciter cannot cause the Court to say that the verdict of the jury was unsafe and unsatisfactory."

In my opinion the consequences of the non-availability of a record or a statement of summing-up would depend on whether or not the Judge summed up. If the Judge did not sum up, then such a failure would, in my opinion, be an omission or irregularity amounting to a miscarriage of justice within the meaning of Section 58(1) of the Courts Act, 1965. And unless the Court applying the provisions of S.58(2) of the Courts Act, 1965, comes to the conclusion, having regard to the circumstances of the case, that no substantial miscarriage of justice actually occurred as a result of such omission or irregularity, they must allow the appeal.

A well established test has been laid down by the English Courts, and adopted by our Courts, to be applied by an Appellate Court in deciding the question whether or not a substantial miscarriage of justice has actually occurred. In this connection it is relevant to state that S.58 of the Courts Act, 1965 derives its source from S.4 of the English Criminal Appeal Act, 1907, our S.58(1) being almost identical with S.4(1) and our S.58(2) in its original version

/12.....

before being amended in 1976 being almost identical with the proviso to S.4(1). Section 58(2) was amended by Section 1 of the Courts (Amendment) Act, 1976. The effect of the amendment is to confer power on the Court of Appeal in a case where they come to the conclusion that no substantial miscarriage of justice has actually occurred, to order a new trial as an alternative to dismissing the appeal. In Cohen and Bateman /1909/ 2 Cr.App. R. 197 in a celebrated judgment of the English Court of Criminal Appeal, delivered by Channel J. it was said inter alia at pp.207 & 208:-

> "Taking Section 4 with its proviso, the effect is that if there is a wrong decision of any question of law the appellant has the right to have his appeal allowed, unless the case can be brought within the proviso. In that case the Crown have to show that, on a right direction, the jury must have come to the same conclusion. A mistake of the judge as to fact, or an omission to refer to some point in favour of the prisoner, is not, however, a wrong decision of a point of law, but merely comes within the very wide words "any other ground", so that the appeal should be allowed according as there is or is not a miscarriage of justice. There is such a miscarriage of justice not only where the Court comes to the conclusion that the verdict of guilty was wrong, but also when

/13.....

67

it is of opinion that the mistake of fact or omission on the part of the Judge may reasonably be considered to have brought about that verdict, and when, on the whole facts and with a correct direction, the jury might fairly and reasonably have found the appellant not guilty. Then there has been not only a miscarriage of justice but a substantial one, because the appellant has lost the chance which was fairly open to him of being acquitted, and therefore, as there is no power of this Court to grant a new trial, the conviction has to be quashed. If, however, the Court in such a case comes to the conclusion that, on the whole of the facts and with a correct direction, the only reasonable and proper verdict would be one of guilty, there is no miscarriage of justice, or at all accounts no substantial miscarriage of justice within the meaning of the proviso."

In the more recent case of Brown vs. R. [1971] 55 Cr.App. R.478, Cairns L.J. delivering the judgment of the English Court of Appeal (Criminal Division) said inter alia at p.484:-

"We approach the question whether or not it is our duty to apply the proviso here by considering whether the evidence was overwhelming and whether a jury properly

/14.....

directed in this case could have come to any other verdict other than that of guilty".

See also Solomon Gbewa & Others vs. The State Cr.App. 33/74 (unreported).

The test may be formulated thus:
If the Court is satisfied that the evidence is overwhelming and that on a proper direction the only proper and reasonable verdict would be one of guilty, then no substantial miscarriage of justice has actually occurred.

Let me now deal with the situation where the Judge summed up to the jury but a record or a statement of the summing-up is for some reason not available before the Court of Appeal. In such a situation, as I stated earlier, the mere absence of a record or statement of the summing-up is not a permissible ground of appeal on which the Court of Appeal can allow an appeal under S.58(1) of the Courts Act, 1965. (See Le CAER (supra). What the Court should do where a record or a statement of the summing-up is not available is to consider whether the verdict is reasonable and can be supported having regard to the evidence. If the Court comes to the conclusion that the verdict is reasonable and can be supported having regard to the evidence, then it must dismiss the appeal. But if on the other hand the Court comes to the conclusion that the verdict is unreasonable or cannot be supported having regard to the evidence then it must allow the appeal. I say

/15.....

that the Court must allow the appeal, because the provisions of S.58(2) of the Courts Act, 1965 cannot be applied to such a situation. It does not make sense to say in one breath that the verdict is unreasonable or cannot be supported having regard to the evidence and in the next to uphold the conviction on the ground that no substantial miscarriage of justice has actually occurred. Indeed to apply the provisions of S.58(2) in such a situation would, in my opinion, be perpetrating a substantial miscarriage of justice. I derive support for this view from Haddy v. R. 29 Cr.App.R.182 where Humphreys J. said at p. 187:-

> "Now Section 4 is the section in which are to be found the grounds upon which the Court of Criminal Appeal are to allow an appeal, and there are two of those grounds in particular to which the proviso applies. It will be sufficient to refer to those two grounds. One is that the Court of Criminal Appeal, on any such appeal against conviction, shall allow the appeal if they think that the judgment of the Court before whom the appellant was convicted should be set aside, on the ground of a wrong decision of any question of law - that does not apply to this case - or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal."

/16.....

There may, however, be cases where although a record or a statement of the summing-up is not available, yet there may be material on which grounds of appeal based on wrong decision of a question of law or on miscarriage of justice may be founded. For instances, the Court may decide to accept the recollection of counsel at the trial on which to found a ground of appeal complaining about misdirection by the trial Judge on a point of law. In such a case the Court must consider the ground of appeal. If the Court decides the point raised in favour of the appellant then they must allow the appeal in accordance with S.58(1) unless they come to the conclusion that no substantial miscarriage of justice has actually occurred within the meaning of S.58(2) of the Courts Act, 1965. But it is important to emphasize that a permissible ground of appeal must be put forward and there must be material on which it is founded. A speculative ground of appeal, for instance suggesting that the trial Judge may have given a wrong direction, is not permissible.

I shall now return to the facts of the instant case. It is not disputed that at the close of the case for the defence and after Counsel for the prosecution and for the defence had addressed the jury in turn, the Learned Trial Judge summed up for some 1 hour 25 minutes after which the jury retired for about 10 minutes and then returned and delivered their verdict. So the Learned Judge complied with Section 197(1) of the Criminal Procedure Act, 1965 and there

/17.....

cannot be any complaint on that score.

Since it is accepted that the Learned Trial Judge summed up to the jury, the question arises: was there any material before the Court of Appeal on which the conviction could be set aside? It is of course accepted on all sides that a record or a statement of the summing-up was not available before the Court of Appeal. The only ground of appeal relied on by the appellant has been set out above. It is to the effect that there being no record of the summing-up the Court of Appeal was not in a position to determine whether or not the jury was properly guided in arriving at their verdict on essential matters. How then did the Court of Appeal approach the matter? The Court of Appeal relied on a number of cases including Cole v. R. (1968-69) A.L.R. S.L. 256 and Harrison v. R. (1967-68) A.L.R. S.L. 119. In Cole v. R. (supra) the Trial Judge prepared his statement of the summing-up some eight months after the transmission of the records to the Court of Appeal and consequently the Court of Appeal refused to countenance it. In the event, the Court proceeded as if there was no statement of the summing-up before them. In delivering the judgment of the Court, Tambia J.A., said inter alia at p.226:-

> "It has been held both by this Court and by the Courts in the United Kingdom that mere absence of a record of a summing-up to the jury is no ground for an

/18.....

72

acquittal if there is overwhelming evidence on which a reasonable jury, properly directed, would have brought the same verdict."

The Learned Justice then stated that there was overwhelming evidence against the appellant, proceeded to discuss the evidence and then dismissed the appeal.

In Harrison v. R. (supra) no record or statement of the summing-up was available before the Court of Appeal. In delivering the judgment of the Court, Sir Samuel Bankole Jones P., said inter alia at p. 123:-

"In our opinion, this is a case which called for careful summing-up. We do not know, for example, whether the jury were told that just as the Learned Trial Judge by himself found that the complainant was wrong or mistaken as to the identity of the second accused and the part it was alleged he took in the commission of the offence, so too the complainant might have been either wrong or mistaken as to the precise details in respect of the part the appellant played . . . . . .

We do not know whether the Learned Trial Judge directed the jury that if they believed this piece of evidence it tended to contradict the evidence of the complainant himself to the effect that the appellant robbed him of Le.23. We do not know whether he directed them that in the circumstances, if they believed that the

/19.....

appellant merely assaulted the complainant, then the former might he found guilty of an alternative offence although not charged with that offence, provided there was evidence of an intention to rob. All these were matters which, had there been a recorded summing-up or a statement of such summing-up, would have greatly assisted this Court. In the circumstances, therefore, it would be dangerous for us to uphold the conviction because we are not sure that if the jury had been properly directed they would have brought in the verdict they did."

It seems to me that the approach adopted by the Court of Appeal to resolve the problem of absence of a record or a statement of summing-up in Cole v. R. is quite different from their approach in Harrison v. R. In Cole's case the Court's approach was that the conviction would be upheld if there was overwhelming evidence on which a reasonable jury properly directed would have returned the same verdict. But in Harrison's case the Court's approach was that if the Court is not sure that the jury was directed or properly directed on essential matters then it would be dangerous to uphold the conviction. With the greatest respect to the members of the Court in Harrison's case, the approach adopted by them was wrong. No authority was cited in support of such an approach and I have not found any to support it. In my opinion, that approach is most speculative. In my judgment, in an

/20.....

appeal where a record or a statement of the summing-up is not available, unless there are grounds of appeal alleging wrong direction in law or miscarriage of justice which are supported by material before the Court, the Court is not permitted to speculate as to whether the jury was properly directed on any particular issue. The Court should assume that the jury was properly directed and then proceed to consider whether the verdict was reasonable and can be supported having regard to the evidence. If the Court comes to the conclusion that the verdict was reasonable and could be supported having regard to the evidence, then the appeal must be dismissed. If, however, they come to the conclusion that the verdict was unreasonable or that it could not be supported having regard to the evidence, then they must allow the appeal.

The ground of appeal relied on by the respondent in the instant appeal speculated as to whether the jury was properly directed "on burden and standard of proof, provocation and insanity." There was no specific complaint on any of those issues. Indeed there was no complaint of wrong direction in law or of miscarriage of justice. And no material on which any such complaint could be founded was put before the Court.

How then did the Court of Appeal approach the matter? In their judgment the Court said inter alia:-

"In the absence of a summing-up we do not know for example whether the Learned Trial

/21.....

> Judge properly directed the jury on the burden of proof and the standard of proof in a criminal trial before a jury . . . . . We do not know whether Learned Trial Judge directed the jury that if they believed that the Appellant was set upon by both Bockarie Collier alias Turnable and the deceased, then what Appellant did was in necessary self defence. There was evidence of provocation also. We do not know whether the Trial Judge properly directed the jury on these essential matters in arriving at their verdict . . . . . We do not know whether the case for the defence was adequately put to the jury and if adequately put whether they would have brought in the same verdict or a different verdict. All these are matters which should have been fully considered by this Court had there been a recorded summing-up or a statement of such summing-up. This Court regrettably has been deprived of that much needed assistance."

It is obvious that the Court of Appeal adopted the Harrison's case approach and speculated as to whether the jury was properly directed on such issues as burden and standard of proof, self defence, and provocation. With respect, that was a wrong approach. The Court should have assumed that the jury was properly directed and then proceed to consider whether the verdict was reasonable and could be supported

/22.....

having regard to the evidence. This they failed to do.

The fact that the Court of Appeal adopted the wrong approach to the situation with which they were faced does not mean that this appeal should ipso facto be allowed. This Court is obliged to apply the right test and decide whether to allow or to dismiss the appeal.

The questions that call for our determination are whether the verdict was reasonable and whether it could be supported having regard to the evidence. As stated earlier, the respondent struck the deceased on the head with an axe after issuing many threats that he would kill her and after taking several solemn oaths that he would kill her. According to the unchallenged and uncontroverted medical evidence, several blows must have been administered on the deceased's head. The deceased sustained very serious injuries on the head. The deceased died shortly after the attack as a result of these grave injuries.

The respondent's defence was that on the day in question, he was engaged in a fight with a gentleman whom he suspected to be the boyfriend of the deceased, when the deceased picked up an axe and attempted to strike him with it. He succeeded in releasing himself from the boyfriend's grips and took possession of the axe from the deceased. During the struggle that followed the axe fell to the ground. In an attempt to ward-off an attack by the deceased, he pushed her as a result of which she fell on the axe thereby sustaining injuries.

/23.....

And reasonable jury is bound to ask: how is it possible for an axe lying on the ground to cause so many serious injuries to someone falling on it? In my opinion the respondent's story was most improbable.

The evidence leaves no doubt in my mind that the deceased died as a result of injuries intentionally inflicted on her by the respondent in the course of a most savage and unprovoked attack on her. In my judgment, no reasonable jury, properly directed would have failed to find the respondent guilty of murder. The verdict was reasonable and it could be supported having regard to the evidence. In my judgment therefore the Court of Appeal was wrong in allowing the appeal of the respondent.

Before concluding this judgment, I think it is necessary to make one or two pertinent observations.

I expressed the opinion earlier that the provision relating to the preparation of a statement of summing-up (i.e. S. 197(2) of the Criminal Procedure Act, 1965) is merely directory. But the fact that it is merely directory does not absolve a trial judge from complying with it.

I am not unaware of the difficulties experienced by Trial Judges, especially those in the Provinces, due to the non-availability of shorthand writers. Without doubt, such difficulties make the task of judges more onerous and tedious. Be that as it may, I think that trial judges should always endeavour to comply with the statutory provision by preparing a statement of their summing-up as soon as possible after the trial.

/24.....

78

The Registrar of the Court of Appeal and the Master and Registrar also have important roles to play in ensuring that a complete record of the proceedings at the trial is available before the Court of Appeal. In this connection Rule 42(1) of the Sierra Leone Court of Appeal Rules, 1973 is relevant. It reads as follows:-

"42(1) The Registrar when he has received a notice of appeal or a notice of application for leave to appeal, or a notice of application for extension of time within which such a notice shall be given shall request the Registrar of the Court below to transmit to him and the Registrar of the Court below shall forthwith transmit the records of the proceedings in the Court below including the summing-up or direction of the Judge and if no such summing-up has been made a statement giving to the best of the Judge's recollection the substance of the summing-up or direction. He shall also request the Registrar of the Court below to transmit to him and the Registrar of the Court below shall forthwith transmit the original exhibits in the case as far as practicable and any original depositions, information, inquisition, plea, or other document usually kept by him, or forming any part of the record of the Court

/25.....

below." /underlining mine/

"Registrar" in the sub-section means the Registrar of the Court of Appeal and "Registrar of the Court below" means the Master and Registrar. This sub-section imposes very important duties on the Master and Registrar and the Registrar of the Court of Appeal which they are obliged to carry out. With regard to the Master and Registrar, it is quite clearly his duty, upon a request being made by the Registrar of the Court of Appeal, to transmit forthwith the records of the proceedings, including the summing-up. He is under a duty to transmit a complete record and a summing-up is an important and integral part of a record. If the summing-up or any part of the proceedings is not included in the record, that record is not a complete record. Before transmitting the record therefore a diligent Master and Registrar should examine the record of proceedings and satisfy himself that what he is transmitting is a complete record. If any part of the record is missing, he should take the necessary steps to rectify that omission. In the case of absence of the summing-up he should first find out whether any direction was given for the recording of the summing-up. If such a direction was given, he should take steps to

/26.....

obtain the record from the Court or other appropriate officer. If no such direction was given, he should take steps to request the trial judge to submit the statement of his summing up as soon as possible.

With regard to the Registrar of the Court of Appeal, it is quite clearly his duty to ensure that the records tramsmitted by the Master and Registrar are complete records. If any part of the records is missing he should call the attention of the Master and Registrar to that defect and request him to repair it. So if a record or a statement of the summing-up is not transmitted as part of the records, the Registrar of the Court of Appeal should immediately call the attention of the Master and Registrar and request him to transmit it forthwith. In my view a diligent Registrar of the Court of Appeal should ensure that the records settled by him for use by the Justices of the Court of Appeal and by the parties to an appeal or their Counsel are complete records.

Having said all this, let me express the fervent hope that all concerned would always endeavour to perform their respective duties so that unnecessary difficulties are not created for the Court and the parties to an appeal, and so that the efficient administration of justice may not be impaired.

/27.....

It only remains for me to express my gratitude to Counsel who appeared on both sides for their able assistance, and to say that I would allow the appeal, set aside the orders of the Court of Appeal and restore the conviction and sentence.

.....

E. Livesey Luke

Ag. C.J.

I agree. .....E.A. Harding J.S.C.

I agree. .....O.B.R. Tejan J.S.C.

I agree .....A.V.A. Awunor-Renner J.S.C.

I agree. .....S. T. Navo J.A.