THE STATE v TURAY & ORS

SC

SUPREME COURT OF SIERRA LEONE, Supreme Court Criminal Appeal 2 of 1981, Hon Mr Justice Livesy Luke CJ, Hon Mr Justice CA Harding JSC, Hon Mrs Justice AVA Awunor-Renner JSC, Hon Mr Justice S Beccles Davies JSC, Hon Mr Justice KEO During JA, 13 July 1982

[1] Criminal Law & Procedure – Evidence – Co-accused statements – Trial judge's duty to advise jury of inadmissibility – Trial judge sitting alone under no duty to warn himself of inadmissibility

[2] Criminal Law and Procedure – Evidence – Confession statements – Voir dire – Burden on prosecution to prove voluntariness – Whether standard of proof beyond reasonable doubt or on balance of probabilities – Whether judge needs to state that he found statements were voluntary "beyond reasonable doubt"

[3] Criminal Law & Procedure – Larceny by a servant – Faking of time sheets – Overwhelming evidence – Larceny Act 1916 s 17(2)(a) – Falsification of Accounts Act 1875 s 1

On 29 March 1978 the three respondents were convicted by Davies J sitting alone in the High Court on various counts of larceny by a servant contrary to s 17(2)(a) of the Larceny Act 1916 and on several counts contrary to s 1 of the Falsification of Accounts Act 1875. The respondents, who worked in a department of the Ministry of Agriculture & Natural Resources, had falsified pay sheets in order to defraud government funds. On 27 January 1981 the Court of Appeal allowed the appeals of the respondents and quashed their convictions. The State appealed against this decision on various grounds. The main issues were whether the trial judge sitting without a jury was obliged to warn himself that the oral or written statement of an accused person is not evidence against a co-accused, and the admissibility of the first respondent's confession statement.

Held, per Livesey Luke CJ, allowing the appeal:

1. It was a fundamental rule of law that the statement of an accused person is not evidence against a co-accused, unless the co-accused either expressly or by implication adopts the statements and makes them his own. It is the duty of a trial judge to explain and impress this rule upon a jury. All the authorities relied upon by the Court of Appeal were cases of trial by jury. However, there was no principle or authority that a judge sitting alone should impress that rule upon himself. In the event that a judge wrongly relied on a statement of an accused person, this would be evident in his judgement and could be remedied by an appellate court. There was nothing in the trial judge's judgment to suggest that he relied on the statements of the co-accused in convicting the respondents. *R v Rudd* (1948) 32 Cr App 138 applied. *R v Gunewardene* (1951) 35 Cr App R 80, *R v Rhodes* (1959) 44 Cr App R 23, *R v Bowen* [1972] Crim LR 312 and *R v Rogers and Tarran* [1971] Crim LR 413 distinguished.

2. It is a long established rule of English law, adopted throughout the Commonwealth, that for a confession by an accused person to be admissible at trial, it must be proved by the prosecution to be voluntary in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. *R v Thompson* [1893] 2 QB 12, *Ibrahim v R* [1914] AC 599 and *Ajodha v The State* [1982] AC 204, [1981] 2 All ER 193, [1981] 3 WLR 1 applied.

3. Where the admissibility of a statement is challenged on the ground that it was involuntary, it is the duty of the judge to determine that issue. The proper course is for the judge to hold a trial within a trial (or *voir dire*) to try the issue. The burden is on the prosecution to prove that the statement was voluntary. The prosecution should normally call all the material witnesses relevant to the making of the statement. The accused may give evidence if he so desires and call witnesses. The trial within a trial is normally held in the absence of the jury. After the

conclusion of the evidence, the judge should rule on the admissibility of the statement in the absence of the jury, if they had been previously excluded. It is the duty of the judge to decide on the admissibility of an impugned statement. He cannot abdicate that duty to the jury. Once the statement has been admitted in evidence then the question of its probative value is for the jury and the defence is entitled to cross-examine who had already given evidence on the voir dire as to the circumstances in which the statement was made. *R v Francis & Murphy* (1959) 43 Cr App R 174, *Sparks v The Queen* [1964] AC 964, *N'Doinje & Ors v R* (1967-68) ALR (SL) 202, *Chan Wei Keung v The Queen* [1967] 2 WLR 552 and *R v Murray* [1951] 1 KB 391 applied.

4. It was an open question as to whether the standard of proof on the prosecution to prove a confession statement at the voir dire in Sierra Leone was "beyond reasonable doubt" or "on the balance of probabilities". For the purposes of this appeal, the court assumed that the proper standard of proof was beyond reasonable doubt. However, the mere fact that the trial judge failed to use the words "beyond reasonable doubt" did not mean he did not apply that standard. There is no magic in those words. The important thing is that on a consideration of the ruling as a whole an appellate court must conclude that the judge applied the right standard. *R v Summers* (1953) 36 Cr App R 14, *Sparks v The Queen* [1964] AC 964 and *Director of Public Prosecutions v Ping Lin* [1975] 3 All ER 175, [1976] AC 574 applied. *Wendo v R* (1964) 109 CLR 559 referred to.

5. The fact that the judge said that the voluntariness of the statement had been proved to his satisfaction, did not mean that the proof was not "beyond reasonable doubt" or that he was not sure. The ruling has to be looked at as a whole. In this case, the trial judge left no room for doubt about his belief that the first respondent was lying or about his belief that the statement was voluntary. On the simple and straightforward issue before him he was saying in effect that he was sure that the prosecution witnesses spoke the truth about the voluntariness of the statement, that the first respondent lied when he said that hope was held out to him and that he was threatened and that the statement was not voluntary. Therefore, the trial judge properly and rightly ruled that the confession statement of the first respondent was admissible in evidence. *R v Rennie* [1982] 1 WLR 64 applied.

6. Even if the confession statement of the first respondent was inadmissible, there was overwhelming evidence against the first respondent as regards the faking of time sheets that the only reasonable verdict was guilty. Similarly, there was no merit in the appeal of the second and third respondents against the trial judge's guilty verdicts.

Cases Referred to

Ajodha v The State [1982] AC 204, [1981] 2 All ER 193, [1981] 3 WLR 1
Chan Wei Keung v The Queen [1967] 2 WLR 552
Customs and Excise Commissioners v Harz & Anor [1967] 1 AC 760
Director of Public Prosecutions v Ping Lin [1975] 3 All ER 175, [1976] AC 574
Ibrahim v R [1914] AC 599
N'Doinje & Ors v R (1967-68) ALR (SL) 202
R v Bowen [1972] Crim LR 312
R v Francis & Murphy (1959) 43 Cr App R 174
R v Gunewardene (1951) 35 Cr App R 80
R v Hepworth and Fearnley (1955) 39 Cr App R 152
R v McLintock [1962] Crim LR 549
R v Murray [1951] 1 KB 391
R v Rennie [1982] 1 WLR 64
R v Rhodes (1959) 44 Cr App R 23
R v Rogers and Tarran [1971] Crim LR 413
R v Rudd (1948) 32 Cr App 138

R v Satori [1961] Crim LR 397
R v Summers (1953) 36 Cr App R 14
R v Thompson [1893] 2 QB 12
Ragho Prasad v The Queen [1981] 1 WLR 469
Sparks v The Queen [1964] AC 964
Wendo v R (1964) 109 CLR 559

Legislation referred to
Courts Act 1965 s 58(4)
Falsification of Accounts Act 1875 s 1
Larceny Act 1916 s 17(2)(a)

Application
This was an appeal by the State against the decision of the Court of Appeal on 27 January 1981, which allowed the respondents' appeal against their conviction in the High Court on 27 March 1978 on various counts of larceny and falsification of accounts. The facts appear sufficiently in the following judgment of Livesey Luke CJ.

Mr Tejan-Cole, Director of Public Prosecutions, for the State.
Mr TS Johnson for the respondents.

Livesey Luke CJ: On 29 March 1978 the three respondents and two others were convicted by Mr Justice CS Davies sitting as a judge alone at the Freetown High Court on an indictment containing eleven counts. It is not necessary to set out the counts in full. It will be sufficient to state their substance.

In Count 1, the first respondent (Ahmed Sankey Dian Turay), the second respondent (Joseph Ngebeh Squire) and one Amadu Mohamed Conteh were charged with larceny by a servant contrary to s 17(2)(a) of the Larceny Act 1916; and the particulars of offence alleged that on a day unknown between 21 August 1975 and 20 September 1975 at Newton Agricultural Station in the Ministry of Agriculture and Natural Resources they stole Le2159.19 belonging to the Republic of Sierra Leone.

In Count 2, the same persons named in Count 1 were charged with the same offence as in Count 1, the only difference being that in the Particulars of Offence it was alleged that the offence was committed between 21 September 1975 and 20 October 1975 and that the amount stolen was Le4214.43.

In Count 3, the same persons named in count 1 were charged with the same offence as in Count 1, the only difference being that in the Particulars of Offence it was alleged that the offence was committed between 21 October 1975 and 20 November 1975 and that the amount stolen was Le3966,93.

In Count 4, the same persons named in Count 1 were charged with the same offence as in Count l, the only difference being that in the Particulars of Offence it was alleged that the offence was committed between 21 November 1975 and 20 December 1975 and that the amount stolen was Le4117.41.

In Count 5, the first respondent and one Evans Rashid Jobo Sama were charged with the same offence as in Count 1, the only difference being that in the Particulars of Offence it was alleged that the offence was committed between 21 May 1975 and 20 June 1975 and that the amount stolen was Le4563.90.

In Count 6, the same persons named in Count 5 were again charged with the same offence as in Count 1, the only difference being that in the Particulars of Offence it was alleged that the offence was committed between 21 June 1975 and 20 July 1975 and that the amount stolen was Le853.38.

In Count 7, the first respondent, the second respondent and the third respondent (Josephus Justice Davies) and Amadu Mohamed Conteh were charged with the same offence as in Count 1, the only difference being that in the particulars of offence it was alleged that the offence was committed between 21 May 1976 and 20 June 1976 and that the amount stolen was Le5463.81.

In Count 8, the same persons named in Count 7 were again charged with the same offence as in Count 1, the only difference being that in the Particulars of Offence it was alleged that the offence was committed between 21 Ju1y 1976 and 20 August 1976 and that the amount stolen was Le5116.31.

In Count 9, the first respondent, the second respondent, the third respondent and Amadu Mohamed Conteh were charged with Falsification of Accounts contrary to s 1 of the Falsification of Accounts Act 1875; and the particulars alleged that on 8 June 1976 at the Newton Agricultural Station they made or concurred in making a false pay sheet No WR443/6/76 purporting to show that the sum of Le399.96 was due and payable as wages for the period 21 May 1976 to 20 June 1976 to certain named persons as employees of the Ministry of Agriculture and Natural Resources.

In Count 10, the first respondent and Evans Rashid Jobo Sarna were charged with the same offence as in Count 9, the only difference being that in the particulars of offence it was alleged that the offence was committed on or about 18 March 1975, that the pay sheet alleged to have been falsified was given as No WR425/J/75, that the amount involved was stated as Le665.28, that the period for which the wages were due and payable was stated as 21 February to 20 March 1975 and that the persons named as employees of the Ministry were different from those named in Count 9.

In Count 11, the first respondent and Evans Rashid Jobo Sama were charged with conspiracy to defraud and in the Particulars of Offence it was alleged that on divers days between 1 July 1974 and 31 January 1975 at Newton Agricultural Station they together with others unknown conspired with intent to defraud the Republic by the preparation of monthly pay sheets for fictitious employees.

The learned trial judge found the first respondent not guilty as charged but guilty of obtaining money by false pretences in respect of Counts 1, 2, 3, 4, 5, 6, 7 and 8; and guilty as charged in respect of Counts 9, 10 and 11. He found the second respondent not guilty as charged but guilty of obtaining money by false pretences in respect of Counts 1, 2, 3, 4, 7 and 8 and guilty as charged in respect of Count 9. He found the third respondent not guilty as charged but guilty of obtaining money by false pretences in respect of Counts 7 and 8; and guilty as charged in respect of Count 9. In respect of each conviction the learned judge imposed a punishment of a fine or imprisonment in default thereof. The three respondents appealed to the Court of Appeal against conviction. In addition the first and the third respondents appealed against sentence. The appeals were heard by the Court of Appeal (Tejan JSC, Warne and Short JJA) in September 1980. Judgment was delivered on 27 January 1981. Three separate judgments were delivered. The main judgment was delivered by Tejan JSC and Warne JA concurred with him adding a few observations of his own. All three justices were in agreement in allowing the appeal of the first respondent against conviction. Tejan JSC and Warne JA allowed the appeals of the second and the third respondents against conviction, whilst Short JA dismissed their appeals. In the result the appeals of all the three respondents were allowed and their convictions were quashed. It is against that decision that the State has appealed to this Court. Seven grounds of appeal were filed by the Director of Public Prosecutions on behalf of the State. The main issues raised in this appeal may be summarized thus:

1. Whether there is any obligation on a trial judge sitting without a jury to warn himself that the oral or written statement of one accused person is not evidence against a co-accused.

2. In what circumstances are a challenged oral or written confession by an accused person admissible in evidence at a trial?

3. What is the standard of proof to be applied in deciding on the admissibility of a confession statement?
4. If the confession of the first respondent was not properly admitted in evidence at the trial, what is the effect?
5. Was there any circumstance that rendered the trial unfair or unsatisfactory?

The question whether the proper verdicts on Counts 1 to 8 should have been larceny as charged was not raised before us. So, it is not necessary to deal with it.

With regard to the first issue formulated above, Tejan JSC stated in several parts of his judgment that there was an obligation on the trial judge to warn himself that the statement of an accused person not on oath was not evidence against a co-accused. He went further to state that where a judge had failed to give himself such a warning, a conviction will be quashed. Mr Tejan-Cole submitted that there is no rule of law or practice that imposed such an obligation on a trial judge sitting alone. I am myself at a complete loss to find any authority to support the propositions of the learned justice. He relied on four cases, namely *R v Gunewardene* (1951) 35 Cr App R 80, *R v Rhodes* (1959) 44 Cr App R 23, *R v Bowen* [1972] Crim LR 312 and *R v Rogers and Tarran* [1971] Crim LR 413.

There is no doubt that it is a fundamental rule of evidence that statements made by one accused person either to the police or to others (other than statements, whether in the presence or absence of a co-accused, made in the course and in pursuance of a joint criminal enterprise to which the co-accused was a party) are not evidence against a co-accused unless the co-accused either expressly or by implication adopts the statements and thereby makes them his own: see *R v Rudd* (1948) 32 Cr App 138. And it has repeatedly been said by the courts not only in England but also in this and other Commonwealth jurisdictions that it is the duty of the judge to impress on the jury that the statement of one accused person not made on oath in the course of the trial (and not falling within any other recognised exception) is not evidence against a co-accused and must be entirely disregarded: see *R v Gunewardene* (1951) 35 Cr App R 80, a decision of the English Court of Criminal Appea1, where Lord Goddard LCJ said, inter alia, at p 91, "if no separate trial is ordered, it is the duty of the Judge to impress on the jury that the statement of the one prisoner not made on oath in the course of the trial is not evidence against the other and must be entirely disregarded."

I shall now refer briefly to the other cases relied on by the learned judge. In *R v Rhodes* (1959) 44 Cr App R 23 the appellant was indicted and tried, together with a man named Mills, of burglary and larceny. It was not disputed that they were together during the whole of the material time. A substantial part of the case against Mills consisted of a statement implicating the appellant, which Mills was alleged to have made and which Mills denied having made. The Chairman, after warning the jury that the statement could not be evidence against the appellant invited the jury first to consider the case against Mills in the light of his alleged admission and then, if they convicted Mills, to consider the case against the appellant on the footing that the two men were together at the material time. It was held by the English Court of Criminal Appeal that by the way in which he invited the jury to consider the case against the appellant, the Chairman was, for all practical purposes, negativing and nullifying his previous warning that Mills' alleged admission was not evidence against the appellant.

R v Bowen [1972] Crim LR 312 was a case where one of the accused persons changed his plea to guilty at the end of the prosecution's case. The judge did not ask the jury to return a verdict on him at that stage. The accused who changed his plea had made a number of statements admitting his guilt and implicating his co-defendants and copies had gone to the jury during the prosecution case. In his summing up the judge used the statements of the accused who had changed his plea extensively to fill in the background of the case, and also to fix the date of the offence which according to the statements had taken place on a Saturday, though he repeatedly warned the jury that they were not evidence against the other accused persons. The main point of the appellant's

defence was that there was no admissible evidence as to the time of the offence. It was held by the English Court of Appeal (Criminal Division) that it was not open to use the statements as he did. So, although the judge gave the jury the requisite warning, he was at the same time directing them to use the statement of one accused person against another, thereby nullifying his previous warning.

R v Rogers and Tarran [1971] Crim LR 413 was a case on which Crichton J sitting at the Mold Assizes ruled against the admissibility of a confession statement of one accused person in a joint trial on the ground that its prejudicial effect against the co-accused outweighed its probative value against its maker. In the course of his ruling the learned judge acknowledged that the statement was not evidence against the other accused person. But otherwise the case is irrelevant to the issue under consideration.

Admittedly, all the cases relied on by the learned justice acknowledged the fundamental rule stated above to the effect that the statement of one accused person is not evidence against a co-accused. The first three cases also acknowledge the duty of a trial judge to explain and impress that rule upon the jury. But with respect to the learned justice, none of the cases lays down any rule that a judge sitting alone should impress that rule upon himself. It is perhaps relevant to note that all the cases relied on by the learned justice were cases of trial by jury. There are many good reasons why it is necessary to impress the rule upon juries. Apart from being laymen, jurors do not give reasons for their verdicts. So, it is not possible to know whether the jury has taken into consideration the statement of one accused person to convict a co-accused. But in the case of a judge sitting alone, the position is different. He gives reasons for his decision. And it could be ascertained by a perusal of his judgment whether he relied on the stamen of one accused person in convicting a co-accused. And if it is ascertained that a judge sitting alone so relied on a statement of an accused person, that irregularity can be remedied by an appellate court. But in the case of a jury, if in spite of a proper direction against relying on the statement of the accused against a co-accused, they still relied on such a statement in convicting a co-accused, an appellate court would be in the dark. In my judgment, the learned justice's proposition of law on this issue is not supported by any authority and in any case is wrong in principle.

It is relevant to state that the learned justice mentioned briefly in his lengthy judgment that the learned judge "in effect made use of the unsworn statement of each appellant against the others." Unfortunately, the learned justice did not substantiate that accusation. I have carefully read the judgment of the trial judge and I have not been able to find any material to support that accusation. In my judgment therefore, the judgment of the learned trial judge cannot be faulted on the ground that he relied on the statement of one of the accused persons tried by him in convicting any of the co-accused, including any of the respondents.

I shall now proceed to consider the issues relating to the admissibility of a confession statement. It has long been an established rule of English Law that to render a confession by an accused person admissible at his trial, the confession must be proved by the prosecution to be voluntary in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The rule was stated by Cave J in *R v Thompson* [1893] 2 QB 12 at p 15 in these terms:

> "By that law [i.e., the Law of England], to be admissible, a confession must be free and voluntary. If it flows from hope or fear, excited by a person in authority, it is inadmissible."

That rule has been stated and restated over the years by the English Courts and has been transported from English soil and transplanted in many Commonwealth countries all over the globe, where, in most cases, it has taken firm root. In this connection, it is not surprising that the most classic statement of the rule was made by the Privy Council in an appeal from a British Colony. That appeal, *Ibrahim v R* [1914] AC 599, was from the judgment of the Supreme Court of the Colony of Hong Kong.

In the celebrated judgment of the Board, delivered by Lord Sumner he said, inter alia, at pp 609-610:

> "It has long been established as a positive rule of English Criminal Law, that no statement by an accused is admissible in evidence against him unless it is shewn by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord Hale."

That statement of the law has been approved and applied by the House of Lords and other English Courts in innumerable cases since 1914: *Customs and Excise Commissioners v Harz & Anor* [1967] 1 AC 760; *Director of Public Prosecutions v Ping Lin* [1975] 3 All ER 175, [1976] AC 574 and *R v Rennie* [1982] 1 WLR 64. The Privy Council also has repeated and applied that statement in many appeals from all over the Commonwealth: see *Sparks v The Queen* [1964] AC 964, an appeal from Bermuda; *Chan Wei Keung v The Queen* [1967] 2 WLR 552, an appeal from Hong Kong; *Ragho Prasad v The Queen* [1981] 1 WLR 469, an appeal from Fiji; and *Ajodha v The State* [1982] AC 204, [1981] 2 All ER 193, [1981] 3 WLR 1, an appeal from Trinidad and Tobago. I think that the judgment of the Board in the last case cited is very instructive and I commend it to trial judges in this jurisdiction.

Where the admissibility of a statement is challenged on the ground that it was not made voluntarily, it is the duty of the judge to determine that issue. The proper course is for the judge to hold a trial within a trial (or voir dire) to try the issue. The burden is on the prosecution to prove that the statement was voluntary. The prosecution should normally call all the material witnesses relevant to the making of the statement. The accused may give evidence if he so desires and call witnesses. The trial within a trial is normally held in the absence of the jury. After the conclusion of the evidence, the judge should rule on the admissibility of the statement in the absence of the jury, if they had been previously excluded. It should be emphasised that it is the duty of the judge to decide on the admissibility of an impugned statement.

He cannot abdicate that duty to the jury: see *R v Francis & Murphy* (1959) 43 Cr App R 174, *Sparks v The Queen* (supra) and *N'Doinje & Ors v R* (1967-68) ALR (SL) 202. Once the statement has been admitted in evidence then the question of its probative value is for the jury: see *Chan Wei Keung v The Queen* [1967] 2 WLR 552. Therefore, after the statement has been admitted, the defence is entitled to cross-examine who had already given evidence on the voir dire as to the circumstances in which the statement was made: *R v Murray* [1951] 1 KB 391.

I shall now turn to the question of the standard of proof required to prove a confession statement at the voir dire. In *R v Thompson* [1893] 2 QB 12 Cave J said, inter alia:

> "If these principles and the reasons for them are, as it seems impossible to doubt, well founded, they afford the Magistrate a simple test by which the admissibility of a confession may be decided. They have to ask: Is it proved affirmatively that the confession was free and voluntary? … it was incumbent on the prosecution to prove whether, and if so, what communication was actually made … before the Magistrate could properly be satisfied that the confession was free and voluntary."

In recent years the English Courts have held that standard of proof on the prosecution is beyond reasonable doubt: see *R v Satori* [1961] Crim LR 397, *R v McLintock* [1962] Crim LR 549. And more recently certain dicta of some of their Lordships in the House of Lords have lent support to that view. In *Director of Public Prosecutions v Ping Lin* [1975] 3 All ER 175, [1976] AC 574 Lord Hailsham said, inter alia, at p 436:

> "The question raised was as to the admissibility of a significant part of it, and this in turn depends upon the application of the well-known rule, peculiar to English Law and its derivative systems, that to be admissible, confessions, however convincing must be voluntary

in the sense that the prosecution must prove, and *prove beyond reasonable doubt*, in the classical words of Lord Sumner in *Ibrahim v. The King*." [Emphasis mine].

And Lord Kilbrandon said, inter alia, at p 442:

"On the second part, if what was said may have been regarded (and acted upon) by the accused as an inducement to confess, the Crown have failed to discharge the burden of showing *beyond reasonable doubt* that the confession was not induced by what was said." [Emphasis mine].

But the Australian Courts have rejected that view. They have advanced very attractive arguments to the effect that the proper standard of proof required to prove a confession statement is proof on the balance of probabilities: See *Wendo v R* (1964) 109 CLR 559, a decision of the High Court of Australia.

This court is of course not bound by the decision of the English or Australian Courts. They are only of persuasive authority. We shall have to make up our minds as to what standard of proof is required in our own jurisdiction. The Court of Appeal said that the standard was proof beyond reasonable doubt. Counsel on both sides before us argued the assumption that that was the right standard. Not having had the benefit of argument of counsel on the issue, I do not consider it advisable for us to express any concluded views on such an important matter. I think that for the purposes of this appeal, we should assume that the proper test is proof beyond reasonable doubt. So the question is whether the learned trial judge applied the standard of proof beyond reasonable doubt in deciding to admit the confession statement of the first respondent (Ex "R"). It was held by the Court of Appeal that the trial judge did not apply that standard of proof. Admittedly the learned judge did not use the words "beyond reasonable doubt" throughout his ruling. After reviewing the evidence, he concluded his ruling thus:

"For many reasons which I don't find necessary to spell out I could not believe the evidence of the accused. As stated earlier I believe the prosecution witness and find that they have proved to my satisfaction their allegation that the statement was voluntarily made. The objection is overruled, and the statement will be admitted in evidence."

In my opinion merely because the learned judge failed to use the words "beyond reasonable doubt" it does not mean that he did not apply that standard. There is no magic in those words. The important thing is that on a consideration of the ruling as a whole an appellate court must come to the conclusion that the judge applied the right standard. In *R v Summers* (1953) 36 Cr App R 14 Lord Goddard LCJ said, inter alia, at p15

"It is far better, instead of using the words "reasonable doubt", and then trying to explain what is a reasonable doubt, to direct a jury: 'You must not convict unless you are satisfied by the evidence that the offence has been committed.' I always tell a jury that, before they convict, they must feel sure and must be satisfied that the prosecution have established the guilt of the prisoner."

See also *R v Hepworth and Fearnley* (1955) 39 Cr App R 152. In *Sparks v The Queen* [1964] AC 964 Lord Morris said, inter alia, at p 982:

"Unless it was shown to the satisfaction of the judge that the statements were voluntary (in the sense referred to by Lord Sumner) he could not admit them."

As I said earlier the English Courts have accepted the beyond reasonable doubt standard on this issue. It will be useful to quote from some of the speeches in *Director of Public Prosecutions v Ping Lin* [1975] 3 All ER 175, [1976] AC 574, a decision of the House of Lords. Lord Morris said, inter alia, at p 433:

"In the circumstances posed a judge must decide whether the prosecution have shown that a statement was voluntary. His decision will generally be one of fact."

And Lord Salmon said, inter alia, at p 444:

> "It follows that a judge may allow evidence of an alleged confession or statement by an accused to go before the jury only if he is satisfied that the confession or statement has not been obtained in contravention of the principle laid down in the authorities to which I have referred … He has to weigh up the evidence and decide whether he is satisfied that no person in authority has obtained the confession or statement. If the judge is so satisfied, he may admit evidence of the confession or statement. If he is not so satisfied he must exclude it."

In my opinion therefore the fact that the judge said that the voluntariness of the statement had been proved to his satisfaction, does not mean that the proof was not "beyond reasonable doubt" or that he was not sure. The ruling has to be looked at as a whole. The objection of the first respondent to the admissibility of the statement was that hope was held out to him by a CID Officer that he would be used as a witness for the prosecution in a case against one Roach, the first respondent's Head of Department then under investigation. In his evidence during the trial within a trial the first respondent deposed in effect that he was threatened that if he did not make a statement, he would not be allowed to go home. In his ruling, after narrating the evidence led by the prosecution and the first respondent, the learned judge said, inter alia:

> "It is from all the evidence that I have to decide whether the prosecution have demonstrated that their allegation that the statement was voluntarily made is true … I feel I am bound to look at the entire evidence and if I see any evidence which if believed would render the statement involuntary, I am so bound to declare. The point really is, has the prosecution demonstrated by their evidence that their allegation is true?"

He then commented adversely on the demeanour of the first respondent as a witness and added that his evidence was demonstrably untrue. Finally, he came to the conclusion previously quoted, that he did not believe the evidence of the accused, that he believed the evidence of the prosecution witnesses and that he was satisfied that the statement was voluntary. In my opinion the learned judge left no room for doubt about his belief that the first respondent was lying when he said that hope was held out to him and that he was threatened, or about his belief that the statement was voluntary. On the simple and straightforward issue before him he was saying in effect that he was sure that the prosecution witnesses spoke the truth about the voluntariness of the statement, that the first respondent lied when he said that hope was held out to him and that he was threatened and that the statement was not voluntary. It follows that in my opinion, and speaking for myself, that the learned judge properly and rightly ruled that the confession statement of the first respondent (Ex "R") was admissible in evidence. In conclusion I respectfully quote the words of Lord Lane CJ in *R v Rennie*, (supra) at p 70:

> "The person best able to get the flavour and effect of the circumstances in which the confession was made is the trial judge, and his findings of fact and reasoning are entitled to as much respect as those of any judge of first instance."

But let us assume that the confession statement of the first respondent was wrongly admitted in evidence and therefore is not evidence against him. The question then arises: was there other admissible evidence against the first respondent to warrant his conviction? The Court of Appeal said there was none except in the words of Tejan JSC "simply a repetition of his statement [to the police Ex "R" and by PWl and PW2 ("the police witnesses"). But is that so? Mr Tejan-Cole has submitted that there was overwhelming evidence against the first respondent even if his confession statement in Ex "R" is ignored. I shall now examine the evidence to determine whether Mr Tejan-Cole's submission has any substance.

The case for the prosecution was that at the material time the respondents were all civil servants attached to the Newton Agricultural Station of the Ministry of Agriculture and Natural Resources. The first respondent was Principal Agricultural Officer and Assistant Chief Agriculturist, the second respondent was Chief Clerk and the third respondent was an Acting Agricultural Officer. A large

number of daily waged workers were employed by the Ministry of Agriculture and Natural Resources and attached to various sections (five in all) under the Newton Agricultural Station. The workers were paid monthly. The names of the workers were entered in a Roll Call book in respect of each section ("Exs J1-5"). time sheets were kept for each section to record the attendance of the workers for the relevant period of each working month. The name of each worker, his designation, his attendance, the total number of days worked, his rate of pay and date of engagement were entered on the time sheet. At the bottom of each time sheet there was the following certificate "I certify that each of the employees listed above has been employed in the capacity stated for the dates shown against his name" and signed by the time keeper and the Officer in Charge of the Station. It would appear that the working month at each section for payment of wages purposes commenced on the 21st of each calendar month and ended on the 20th of the next calendar month.

On the basis of the entries on the time sheet, a pay sheet (or payment voucher) was prepared in respect of each section under the Station, The following particulars were entered on the pay sheets: the name of the worker: his designation, his daily rate of pay, number of days worked, normal wages, gross wages (including overtime), net wages payable and the total of the wages payable to all the workers listed. At the bottom of each pay sheet there were two certificates headed "A" and "B". Certificate "A" reads as follows:

> "I certify that the above-named employees (with the exception of those shown as unclaimed) were this day paid by me and that all deductions and unclaimed wages have been brought to account under Receipt Voucher."

This certificate should be dated, signed by the Paying Officer, and witnessed after the wages have been paid. Certificate "B" reads as follows:

> "The gross expenditure of Le … was incurred against the authority of DW No … and will not cause any excess expenditure."

This certificate should be dated and signed by Officer in Charge of the station.

After the preparation of the pay sheet and after the Officer in Charge had signed it, it was forwarded together with the relevant time sheet and other relevant documents to the Headquarters of the Ministry in Freetown and presented to the Accounts Section for processing. The officers at the Accounts Section checked the various entry on the documents presented to them and if satisfied passed the pay sheet for payment. A cheque was then prepared for the total of the various amounts on all the pay sheets presented for the month. The cheque was made payable to the Principal Agricultural Officer, drawn on the Bank of Sierra Leone and signed by the accountant and other responsible officer in the Ministry. The cheque was then taken to the Bank of Sierra Leone and cashed after it had been endorsed for payment. The cash was then taken to the Station where the workers employed in the various sections were paid. Each worker on receiving his wages signed or affixed his thumb print at the back of the pay sheet to acknowledge receipt of his wages. After completion of payment, the Paying Officer completed and signed Certificate "A" on the pay sheet.

Between July 1974 and August 1976 fake time sheets were prepared in respect of fictitious workers who were not employed in any of the Sections under the Station and whose names did not appear on the roll call book for any Section. The entries on the fake time sheets were then entered on fake pay sheets claiming payment in respect of the fictitious workers. The requisite Certificates "B" were duly signed by the Officer in Charge of the Station. The fake pay sheets and the fake time sheets were then presented to the Ministry in Freetown together with genuine pay sheets and time sheets. A cheque for the total amount stated in all the pay sheets (genuine and fake) was prepared signed and made payable to Principal Agricultural Officer. The cheque was cashed at the Bank of Sierra Leone. Part of the cash received from the Bank of Sierra Leone was used to pay the genuine workers and the surpluses (consisting of the amounts claimed in respect of the fictitious workers) were not paid back to the Ministry but were misappropriated.

This in brief, according to the admissible evidence led by the prosecution, was the racket that operated at the Newton Station during the period relevant to the indictment.

What then was the evidence (if any) against the first respondent? I shall answer this question in respect of each Count in turn.

Count 1. The pay sheets for the working month 21 August 1975 to 20 September 1975 called for Le11,084.55. Among them were three pay sheets namely Ex "A1" for Le708.84, Ex "A2" for Le701.91 and "A5" for Le748.44 totalling Le2159.19. Certificate "B" on each of those three pay sheets was signed by the first respondent, in his capacity as Officer in Charge of the Station. The relevant supporting time sheets were certified by the first respondent and the time keeper in the following terms:

> "I certify that each of the employees listed above has been employed in the capacity stated for the dates shown against his name."

But in fact, the names of the workers entered on the three pay sheets and their supporting time sheets did not appear on any of the relevant roll call books. Mr Harleston (PW6), a principal auditor, said in evidence that the first respondent was the vote controller of the Station, and as such he was in charge of the vote service ledger (Exs "K1" & "K2"). He said that the amounts on the pay sheets should be entered on the vote service ledger. He said that the amounts in respect of the three pay sheets were not entered on the vote service ledger. All the pay sheets for that month (including the three referred to above, i.e., Exs "A1", "A2" & "A5") together with the supporting time sheets and other relevant documents were presented to the accounts section of the Ministry in Freetown. In due course a cheque was prepared and signed by the responsible officers.

The cheque was dated 23 September 1975, drawn on the Bank of Sierra Leone for Le11.084.55 and made payable to the "Principal Agricultural Officer Newton." The cheque was endorsed for payment by Mrs Webber, (PW5) the sub-accountant at the Ministry on behalf of the Principal Agricultural officer, Newton. She said that she made that and other endorsements at the request of the first respondent and the learned trial judge accepted her evidence. The cheque was cashed at the Bank of Sierra Leone. Payment of the workers was effected on 24 September 1975. According to Certificate "A" on the three pay sheets (Exs "A1", "A2" & "A5") the workers listed therein were alleged to have been paid a total of Le2159.19 on 24 September 1975. As stated earlier the workers listed in the three pay sheets were fictitious. The clear inference therefore is that the monies claimed and received in respect of those fictitious workers were misappropriated. The irresistible conclusion therefore is that the first respondent signed a certificate falsely certifying that the workers listed on the three time sheets were employed during the relevant period, falsely signed Certificate "B" on the three pay sheets and concurred in presenting those documents to the Ministry falsely representing that the workers listed in the three pay sheets and the supporting time sheets were employed in one of the Sections under the Station.

Acting on that false representation, the responsible officers issued a cheque for a total of Le11,084.55 which included the sum of Le2159.19 claimed in respect of the three pay sheets. Thereby the sum of Le11,084.55 was paid by the Bank of Sierra Leone for and on behalf of the Ministry, and the sum of Le2159.19 misappropriated. Clearly on the evidence the first respondent actively participated in making the false representation and concurred in fraudulently appropriating the sum of Le2159.19.

The evidence in support of Counts 2 to 8 was to the same effect. So, it is not necessary to discuss it in any detail. It will be sufficient to highlight certain pieces of evidence in respect of each Count.

Count 2. The fake time sheets were certified by the first respondent. The fake pay sheets (Exs "B1", "B2", "B3" & "B4") were also certified by him. The total amount claimed on those four pay sheets was Le4214.43. The cheque dated 23rd October 1975 was made payable to the Assistant

Chief Agriculturist III and was for Le11,056.35 (Ex "AA2"). The cheque was endorsed by the first respondent and cashed at the Bank of Sierra Leone. Payment of workers was certified on the four pay sheets as having been effected on 24 October 1975.

Count 3. The fake time sheets were certified by the first respondent. The fake pay sheets (Exs "C1", "C2", "C3", "C4") were also certified by him. The total amount claimed on those four pay sheets was Le3966.93. The cheque dated 26 November 1975 was made payable to the Principal Agricultural Officer, Newton and was for Le12,206.05 (Ex "AA3"). The cheque was endorsed by Mrs Webber "for the Principal Agricultural Officer Newton." It was cashed at the Bank of Sierra Leone. Payment of workers was certified on the four pay sheets to have been effected on 26 November 1975.

Count 4. The fake time sheets were certified by the first respondent. The fake pay sheets (Exs "D1", "D2", "D3" & "D4") were also certified by him. The total amount claimed on those four pay sheets was Le4117.41. The cheque was dated 24 December 1975, made payable to the "P.A.O. Newton" and was for Le14,150.86 (Ex "AA4"). The cheque was endorsed by the first respondent and it was cashed at the Bank of Sierra Leone. Payment of workers was certified on the four pay sheets as having been effected on 24 December 1975.

Count 5. The fake time sheets were certified by the first respondent. The fake pay sheets (Exs "El", "E2", "E3" & "E4") were also certified by him. The total amount claimed on the four pay sheets was L4563.90. The cheque was dated 24 June 1975, made payable to the Principal Officer Newton" and was for Le14,742.18 (Ex "AA5"). The cheque was endorsed by the first respondent and it was cashed at the Bank of Sierra Leone. Payment of the workers was certified on the four pay sheets by the first respondent himself as having been effected, but no date is stated.

Count 6. Only one fake time sheet and one fake pay sheet are involved. The time sheet is certified by the first respondent. The amount claimed in the pay sheet (Ex "F1") is Le853.38. The cheque was dated 25 July 1975, made payable to the "Principal Agricultural Officer Newton" and was for Le13,164.14. It was endorsed by Mrs Webber on 25 July 1975 for "Principal Agriculture Officer Newton." The date payment of workers was effected is not stated on the pay sheet. The paying officer did not sign the certificate, but a witness to the payment signed.

Count 7. The fake time sheets were not certified by the first respondent. But the fake pay sheets (Exs "G1", "G2", "G3", "G4" & "G5") were certified by him. The total amount claimed on those five pay sheets was Le5463.81. The cheque was dated 22 June 1976 made payable to the "Principal Agriculture Officer Newton" and was for Le15,390.83 (Ex "AA7"). The cheque was endorsed by the first respondent and it was cashed at the Bank of Sierra Leone. Payment of the workers was certified on the five pay sheets as having been effected. But the date of payment is stated on only two pay sheets (i.e., Exs "G4" & "G5") as 24 June 1976.

Count 8. The fake time sheets were not certified by the first respondent. But the fake pay sheets (Exs "H1", "H2", "H3" & "H4" were certified by him. The total amount claimed on those four pay sheets was Le5116.37. The cheque was dated 23 August 1976, made payable to the "Principal Agriculture Officer Newton" and was for Le13,809.69 (Ex "AA9"). The cheque was endorsed by the first respondent and it was cashed at the Bank of Sierra Leone. Payment of the workers was certified on the four pay sheets as having been effected on 27 August 1976.

Count 9. This count relates to pay sheet WR44/6/76 (Ex "G1"). According to the evidence already referred to, the entries thereon, including the amounts entered as wages due workers who were alleged to have worked at the Newton Poultry Station, were clearly false. The pay sheet was certified by the first respondent. On this evidence the reasonable inference could be drawn that he made or concurred in making the false entries on the pay sheet with intent to defraud the Republic of the sum of Le399.96 (i.e., the total amount entered on the pay sheet).

Count 10. This count relates to pay sheet WR425/3/75 (Ex "F2"). The total amount claimed in respect of fictitious workers listed therein is Le665.28. It was certified by the first respondent on 18 March 1975. A cheque dated 21March 1975 for Le12,823.87 was made payable to "P.A.O. Newton." The cheque was endorsed by the first respondent and it was cashed at the Bank of Sierra Leone. From this evidence it could reasonably be inferred that the first respondent made or concurred in making the false entries and with intent to defraud the Republic of the sum of Le665.28.

Count 11. According to the judgment of the trial judge the evidence relied on by the prosecution to prove this count is the confession statements of the two accused persons i.e., Ex "R" in the case of the first respondent and Ex "S" in the case of the other accused. And that was the evidence relied on by the trial judge in convicting the first respondent. But since I am assuming in this part of my judgment that Ex "R" was wrongfully admitted in evidence, it means that there is no other evidence to warrant the conviction on this count. In the circumstances I would dismiss the appeal on this count.

It is of interest to note that the first respondent made a cautioned statement on the 12 January 1977 after he had been charged. The statement was tendered and admitted in evidence without any objection by or on behalf of the first respondent (Ex "T"). And no suggestion was made at the trial or since then that that statement was not a voluntary statement. The statement reads:

> "I rely on my previous statement made to the police on Monday 10 January 1977 at 1606 hours."

The previous statement mentioned in Ex "T" was Ex "R", the impugned statement.

I propose to base my conclusion on the evidence against the first respondent as analysed above, excluding the contents of the two statements (Ex "R" & Ex "T") from my consideration.

On that basis, the evidence against the first respondent on each of Counts 1 to 10 was, in my judgment, clear and overwhelming and that the only reasonable verdict that a jury properly directed, or a judge properly directing himself, would have arrived at one of guilty on each of those counts.

I shall now turn to the appeals against the second and the third respondents. In their Notices of Appeal to the Court of Appeal the second respondent filed three grounds of appeal against conviction, and the third respondent filed two grounds of appeal against conviction. At the hearing of the appeal before the Court or Appeal, the third respondent was given leave to file an additional ground of appeal. After dealing exhaustively with the appeal of the first respondent, the Court of Appeal (majority) proceeded to summarily dispose of the appeals of the second and third respondents by allowing their appeals. They failed to consider the merits or otherwise of their appeals. With respect, it would appear that the majority of the Court of Appeal were so obsessed with the appeal of the first respondent, especially on the issue of admissibility of his statement to the police, that they allowed their views to be clouded in dealing with the appeals of the second and the third respondents. I shall now deal with the appeals against the second and third respondents seriatim.

The second respondent was charged and convicted on Counts 1, 2, 3, 4, 7, 8 & 9. The grounds of appeal of the second respondent to the Court of Appeal were as follows:

1. That the verdict is unreasonable or cannot be supported having regard to the evidence.
2. That the learned judge did not sufficiently consider the case for the appellant.
3. That the learned trial judge erred in the law relating to larceny and falsification of accounts.

None of these grounds of appeal was dealt with by either Tejan JSC or Warne JA in their respective judgments. The second respondent made three statements to the police. The first was a cautioned statement made on 7 January 1977. It was objected to but the trial judge after holding a

trial within a trial held that it was made voluntarily and admitted it in evidence (Ex "H"). The second was a cautioned statement made on 11 January 1977. Counsel for the second respondent objected to it, but he immediately thereafter withdrew his objection. Whereupon the learned trial judge admitted it in evidence (Ex "N"). The third was a cautioned statement made on 12 January 1977 after he had been charged and was admitted in evidence without any objection (Ex "V"). In the first statement (Ex "M") the second appellant gave a detailed catalogue of his involvement in preparing fake time sheets and fake pay sheets from August 1975 to November 1976. He admitted preparing fake time sheets and fake pay sheets and then benefiting from the distribution of the loot thereof in respect of: 21 August to 20 September 1975 (Count 1); 21 September 1975 to 20 October 1975 (Count 2); 21 October 1975 to 20 November 1975 (Count 3); and period 21 November 1975 to 20 December 1975 (Count 4). In the second statement (Ex "N") the second respondent again gave a detailed catalogue of his involvement and participation in various corrupt transactions relating to reparation of time sheets and pay sheets from January to November 1976. He admitted preparing fake time sheets and fake pay sheets and then benefiting from the loot thereof in respect of (Count 5) the period 21 May 1976 to 20 June 1976 (Count 7) and the period 21 July 1976 to 20 August 1976 (Count 8). In the third statement (Ex "V") the second respondent stated that he relied on his two previous statements i.e. Ex "M" & Ex "N".

There was no appeal to the Court of Appeal against the admission in evidence of the first statement (Ex "M") or against the admissibility of the second (Ex "N") or the third (Ex "V") statement. In addition to these three uncontested confession statements before the Court of Appeal, there was also overwhelming and uncontroverted oral and other documentary evidence against the second respondent. There was evidence that he signed the requisite certificates on the relevant time sheets and pay sheets in respect of the period 21 August 1975 to 20 September 1975 (Exs "Al", "A2" & "A5" (Count 1); period 21 September 1975 to 20 October 1975 (Exs "Bl-4" and Count 2); period 21 October 1975 to 20 November 1975 (Exs "C1-4" and Count 3); period 21 November 1975 to 20 December 1975 (Exs "D1-4" and Count 4); period 21 May 1976 to 20 June 1976 (Exs "G1-5" and Count 7); period 21 July to 20 August 1976 ("Exs H1-4" and Count 8); pay sheet WR443/6/76 (Ex "G1" and Count 9).

Evidence was also led that the second respondent's thumb print was affixed to the back of the pay sheets relevant to the charges against him, thereby creating the impression that those thumb prints were the thumb prints of genuine workers who had received their wages.

Having regard to the grounds of appeal filed by the second respondent and the overwhelming evidence against him, there was clearly no merit in his appeal to the Court of Appeal. Therefore, the Court of Appeal should have dismissed his appeal as being unmeritorious. It follows that in my judgment the Court of Appeal (majority) erred in allowing the appeal of second respondent against his conviction in respect of each of the counts on which the learned judge convicted him.

The third respondent was charged and convicted on Counts 7, 8 & 9. His grounds of appeal to the Court of Appeal were as follows:

1. That the learned trial judge erred in the law relating to obtaining by false pretences and falsification of accounts.
2. That the verdict is unreasonable and cannot be supported having regard to the evidence.
3. His additional Ground of Appeal was in the following terms: "The third appellant having been found not guilty of count 7 and 8 of stealing monies alleged to belong to the Republic the learned trial judge erred in law in convicting him of obtaining the said monies which were never proved by the prosecution to have belonged to the Republic of Sierra Leone, by false pretences and with intent to defraud."

The Court of Appeal (majority) failed to deal with any of these grounds of appeal. The third respondent made three statements to the police. The first was made on 8 January 1977 (Ex "O") and

the second on 11 January 1977 (Ex "P"). The third was made on 11 January 1977 when the third respondent was charged (Ex "W"). All three statements were tendered and admitted in evidence without any objection. In the first statement he admitted that he started signing fake time sheets and fake pay sheets in February or March 1976 and continued doing so until December 1976 "when there was no funds again to cover payments for the fake workers." He also admitted sharing in the loot. It is relevant to note that the period covered in the counts against him is May 1976 to August 1976. In the second statement he repeated his previous admission additional evidence that he signed the certificates on the supporting time sheets of Exs "G1-5" as Officer in Charge and also countersigned the pay sheets (Count 7). He also certified the supporting time sheets of Exs "H1-4" as Officer in Charge and countersigned the pay sheets (Count 8). He also certified the supporting time sheet of Ex "G1" as Officer in Charge and countersigned the pay sheet (Count 9). It is abundantly clear therefore that there was overwhelming evidence against the third respondent on all the three counts in respect of which he was charged. The points of law raised in his grounds of appeal were imprecise and lacked any substance. In the circumstances the Court of Appeal should have dismissed his appeal against conviction as being without any merit.

I shall now deal with the final issue. Tejan JSC concluded his judgment by saying that he was "unable to say that the appellants had a fair trial. My view is that the entire trial was unsatisfactory." Mr Tejan- Cole has submitted that that statement was totally unjustified. The learned justice did not specify in what respect the trial was unfair or unsatisfactory. I entirely agree with Mr Tejan-Cole's submission.

Rather than the trial being unfair or unsatisfactory, the printed records show that the learned trial judge bent over backwards on too many occasions during the trial in an apparent effort to be fair to the accused resulting in the trial being unnecessarily protracted.

In the result I would allow the appeal against the first respondent in respect of count 1 to 10. I would set aside the orders or the Court of Appeal with respect to these counts and restore his conviction on those counts (counts 1 to 10). I would dismiss the appeal against him in respect of count 11 and confirm the order of the Court of Appeal acquitting him on that count. I would allow the appeal against the second respondent in respect of counts 1, 2, 3, 4, 7, 8 & 9. I would set aside the orders of the Court of Appeal and restore his conviction on those counts. I would allow the appeal against the third respondent in respect of counts 7, 8 & 9. I would set aside the orders of the Court of appeal and restore his conviction on those counts.

The first respondent appealed against sentence to the Court of Appeal. This court, exercising the powers of the Court of Appeal under s 58(4) of the Courts Act 1965, may pass such other sentence warranted in law (whether more or less severe) in substitution for the sentence passed by the trial judge. In my opinion the sentence imposed on a convicted person must meet the crime and the case.

The prevalence of this type of offence and the magnitude of the fraud perpetrated by the first respondent are some of the factors that the learned trial judge should have taken into consideration in passing sentence.

In my opinion the circumstances of this case warranted a custodial sentence. To impose a fine in such circumstances would give the impression that criminals may profit from their crime. Speaking for myself, I would have substituted a custodial sentence for the sentence imposed by the trial judge.

But in all the circumstances this court has decided not to interfere with the sentence imposed.

Hon Mr Justice CA Harding JSC: I agree. **Hon Mrs Justice AVA Awunor-Renner JSC**: I agree. **Hon Mr Justice S Beccles Davies JSC**: I agree. **Hon Mr Justice Ken EO During JA**: I agree.

Reported by Anthony P Kinnear