JAMIRU v THE STATE

SC

SUPREME COURT OF SIERRA LEONE, Supreme Court Criminal Appeal 6 of 1982, Hon Mr Justice Livesey Luke CJ, Hon Mr Justice CA Harding JSC, Hon Mr Justice OBR Tejan JSC, Hon Mrs Justice AVA Awunor-Renner JSC, Hon Mr Justice S Beccles Davies JSC, 24 April 1984

[1] Criminal Law & Procedure – Evidence – Accomplice – Whether corroboration warning required – Question of fact and law – Trial judge should advert mind as to whether witness is an accomplice or has an interest to protect – Larceny Act 1916 s 32(1)

[2] Criminal Law & Procedure – Evidence – Interested witness – Trial judge has discretion to warn himself of danger of convicting on uncorroborated evidence of interested witness – Courts Act 1965 s 58(2)

The appellant, the Provincial Secretary, Northern Province, was convicted in the High Court by CS Davies JA on charges under s 32 (1) of the Larceny Act 1916. The offences related to inflating invoices which resulted in overcharging for electrical wiring services provided to government buildings. The Court of Appeal upheld the conviction, holding that PW28, the electrician who carried out the work, was neither an accomplice nor a witness who had a purpose to serve or an interest to protect and, as such, the trial judge was not obliged to warn himself about the danger of convicting on the uncorroborated evidence of that witness. It further held that PW32, the officer who typed up the invoices on the handwritten instructions of the appellant, was a witness who had a purpose of his own to serve, but applied the provisions of s 58(2) of the Courts Act 1965 to uphold the conviction on the basis that the totality of the evidence was such that no substantial miscarriage of justice would be done. On appeal to the Supreme Court, the appellant argued that PW28 was an accomplice whose evidence required corroboration, that PW28 had a purpose to serve or interest to protect and that, as regards PW32, the court erred in finding that there would no substantial miscarriage of justice done.

Held, per Harding JSC, dismissing the appeal:

1. The trial judge reviewed the entire evidence and concluded that PW28 and PW32 were speaking the truth. This was a finding of fact which the Court of Appeal accepted and there was no reason to disturb this.

2. The question of whether a witness is an accomplice is one of mixed fact and law depending on the circumstances of the particular case. The trial judge should have adverted his mind as to whether PW28 could be regarded as an accomplice or a witness who had a purpose to serve. However, as the Court of Appeal held that PW28 was neither an accomplice or a witness who had a purpose to serve, the trial judge was under no obligation to warn himself of the danger of convicting on his uncorroborated evidence..

3. The Court of Appeal held that PW32 was a witness who had a purpose to serve. It is not quite clear what purpose of his own this witness could have had to serve but assuming this was correct, the trial judge merely had a discretion to warn himself of the danger of convicting on his uncorroborated evidence. The judge was under no obligation to warn himself of this danger. In those circumstances it cannot be said that he erred in law in failing to warn himself and it was therefore not necessary to apply the provisions of s 58(2) of the Courts Act 1965. *R v Stannard* (1964) 48 Cr App R 81 applied.

Cases referred to
Davies v Director of Public Prosecutions [1954] AC 378
R v Prater (1960) 44 Cr App R 83, [1960] 2 QB 464
R v Purnell (1968) Cr Law Review 449
R v Roberts & Witney (1967) Cr Law Review 477
R v Russell (1968) 52 Cr App R 147
R v Stannard (1964) 48 Cr App R 81

Legislation referred to
Courts Act 1965 s 58(2)

Larceny Act 1916 s 32(1)

Appeal
This was an appeal by Kapindi Jamiru The facts appear sufficiently in the following judgment of Beccles Davies JSC.

Mr ALO Metzger for the appellant.
Mr SB Berewa and Mr E Taylor-Kamara for the State.

HARDING JSC: The appellant was convicted by the High Court at Freetown on 25 February 1979 by CS Davies JA (sitting as judge alone) on an indictment which, inter alia, charged him and two others with the offence of causing by false pretences a valuable security to be delivered to another contrary to s 32(1) of the Larceny Act 1916. At the material time he was the Provincial Secretary, Northern Province and was stationed at Makeni. It was his responsibility to see that certain Government Quarters and Buildings, in respect of which notice to re-wire had been issued by the Senior District Manager, Sierra Leone Electricity Corporation, be electrically wired and for this purpose he secured the services of one Sulaiman Jalloh who was called as a witness for the prosecution (hereinafter referred to as PW28). Jalloh, although he had demonstrated that he was a competent electrician, was however not licensed, and in order to be able to undertake the exercise he was required to do, had to come down to Freetown and negotiate with one Francis Wonnie, a Licensed Electrical Contractor, to be appointed his representative in Makeni. Wonnie gave him letterheads, electricity forms, a letter of authorisation and a stamp all of which he showed to the appellant who then expressed approval and informed him that when he was ready he would send for him. All this happened towards the end of 1975.

Subsequently, the appellant sent for Jalloh and asked him if he could make estimates and Jalloh replied that he could not read or write. The appellant then informed him that he had received a re-wiring notice for two Government Quarters at Teko and wanted to know how much he would charge for doing the job. Jalloh could not say until after he had seen what was to be done. He was duly shown the quarters and he enquired from the appellant if he was to provide the materials and when he was told no, he then made his charges.

Eventually a bargain was struck for the sum of Le200 for each quarter. On the following morning he collected the necessary materials from the appellant's quarters and proceeded to do the job, on the completion of which he reported to the appellant. The appellant then asked him for the electricity form (i.e. the completion form) and he handed him not only the forms but letterheads as well, whereupon the appellant told him he was going to have the work inspected. The appellant later told him that he had received the inspection report and that the work had been done satisfactorily, and Jalloh said that he "prepared a bill". The appellant later asked him to check from the chief clerk if the bill was ready and when he was told that it was not, he went and reported to the appellant and he was requested by him to come again. Subsequently the appellant's Land Rover driven by one Tejan Jalloh (since deceased) went for him and he was taken to the appellant's office whereupon the appellant informed him that his bill was ready; he then produced the bill and he (Jalloh) signed and stamped it. A few days later the appellant sent for him and informed him that the voucher had been prepared and that he should go to the Sub-Treasury and collect the cheque. The accountant, one JA Harding, after ascertaining his identity, asked him to sign the voucher and to stamp it with his stamp. The cheque was then handed over to him to take to the bank for encashment. After the cashing of the cheque Jalloh returned with the money to the appellant, who after checking it, asked him how much he had to pay him. He replied that it was Le400 and the appellant counted out this amount and gave it to him plus Le20 more in appreciation for the excellent performance of the job, He stated that the amount he collected from the bank on that occasion was over a thousand leones. It is worth mentioning that on each occasion that the appellant sent for Jalloh it was his driver, Tejan Jalloh, that he would send and it was this same driver who went with him to the Sub-Treasury and the bank and returned with him to the appellant with the money.

Other re-wiring jobs were done by Jalloh on the instruction of the appellant not only in Makeni, but in Magburaka, Kabala, Port Loko and Kambia and in each case the same procedure was followed; that is, the bills would be prepared in the appellant's office on the instructions of the appellant, he

(Jalloh) would sign and stamp them and leave them with the appellant who would later notify him when the vouchers were ready and he would be accompanied by a member of appellant's staff to the Sub-Treasury to collect the cheques and to take them to the bank and to return to the appellant with the money, which was always in excess of what was due him. However, as far as he (Jalloh) was concerned the appellant always paid him what was due him. Materials for the various jobs were provided by the appellant. Jalloh received final payment for all the jobs he undertook at the instance of the appellant at about the end of 1976, when appellant was due to go on leave.

The particulars of the offence for which the appellant was convicted alleged that he (and two others named) "on or about 9 April 1976 at Makeni in the Northern Province of Sierra Leone, with intent to defraud, caused a valuable security, that is to say a Barclays Bank (Sierra Leone) Ltd cheque No 011776 dated 9 April 1976 for the sum of Le5,332.45 to be delivered to Sulaiman Jalloh by John Abesodun Harding, sub-accountant attached to the Sub-Treasury Makeni aforesaid by falsely representing that the said sum was due and payable by the Republic to the said Sulaiman Jalloh in respect of expenses incurred and services rendered to the said Republic."

Among the many witnesses called by the prosecution was one IBS Kamara, Staff Superintendent DO's Office, Makeni (hereinafter referred to as PW32) who testified that from 1 July 1975 to 1 July 1976, he was clerk/confidential typist in the Provincial Secretary's Office, Makeni, and that he worked under the appellant. He stated that as confidential typist he was in charge of typing documents pertaining to confidential and secret matters and that he also typed other documents which were not confidential or secret that were handed to him by the Provincial Secretary. He stated that he prepared bills from manuscripts supplied to him by the appellant in the appellant's own handwriting after which the appellant would return the typed bills duly signed and stamped by PW28 as well as by the appellant himself. Vouchers in respect of these bills were made out in the name of PW28 by the finance clerk.

He further went on to say that on the instructions of the appellant he would destroy the manuscripts when the typed bills were received by him duly signed by the appellant.

It is the prosecution's case that the appellant acted fraudulently, thereby causing the Government to incur our extra expenses by preparing false documents, to wit inflated bills, which he knew to be false and thereby inducing the accountant in the Sub-Treasury in Makeni to part with Government monies which were in his custody.

The appellant on his part denied that he ever prepared the bills in manuscript and got PW32 to type them before calling on PW28 to sign and stamp them. He suggested that PW32 assisted PW28 by typing the bills during official working hours, that both of them were very friendly and that they were both lying.

As hereinbefore stated, the appellant was convicted of the offence. He appealed to the Court of Appeal and, as far as this conviction is concerned, the relevant ground is as follows:

> "That the learned trial judge erred in law and in fact in that he failed to direct himself on the law relating to accomplices with particular reference to the evidence of PW28 and PW32."

The Court of Appeal in upholding the appellant's conviction held that PW28 was neither an accomplice nor a witness who had to serve or an interest of protect, and hence the trial judge was not obliged to warn himself about the danger of conviction on the uncorroborated evidence of that witness; however, as regards PW32 it held that he was a witness who had a purpose of his own to serve, but applied the provisions of s 58(2) of the Courts Act No 31 of 1965 on the ground that the totality of the evidence is such that no substantial miscarriage of justice was done to the appellant by convictions.

The appellant has now appealed to this Court on the following grounds:

1. The learned judges erred in law and in fact in holding that PW28 was not an accomplice and that consequent upon this, his evidence needed no corroboration.

2. The learned judges also erred in law and in fact in holding that PW28 had no purpose to serve or interest to protect.

3. The learned judges erred in law and in fact in holding that in spite of their finding that PW32 was a witness who had a purpose of his own to serve and that the judges should have warned themselves, there was no substantial miscarriage of justice done to the appellant by his conviction.

Counsel for the appellant in arguing the appeal referred to various portions of the evidence and submitted that from those bits of evidence PW28 was in fact and in law an accomplice, or in the alternative a person who had a purpose of his own to serve or an interest to protect and contended that as such, the Court of Appeal should have held that the trial judge should have warned himself of the danger of convicting on the uncorroborated evidence of such a witness, and that since he failed to do so the conviction should be quashed. He contended also that the Court of Appeal having found that PW32 was a witness who had a purpose of his own to serve, there being no warning of the danger of convicting on the uncorroborated evidence of this witness, it erred in law and in fact in applying the provisions of s 58(2) of the Courts Act No 31 of 1965, since the burden of establishing that on the totality of evidence there was no miscarriage of justice had not been discharged by the prosecution.

The offence for which the appellant was convicted is made a misdemeanour by s 32(1) of the Larceny Act 1916, and it is trite law that in cases of misdemeanour an accomplice includes all persons committing, procuring or aiding and abetting the commission of such offences.

In *Davies v Director of Public Prosecutions* [1954] AC 378, the rule was laid down that a conviction would be quashed where no warning has been given as to the danger of acting on the uncorroborated evidence of an accomplice.

In *R v Prater* (1960) 44 Cr App R 83, [1960] 2 QB 464 it was held that this was a rule or practice and it was there stated that "it is desirable in cases where a person may be regarded as having some purpose of his own to serve the warning against uncorroborated evidence should be given."

In *R v Stannard* (1964) 48 Cr App R 81, it was held that whether or not to give a warning depends on the facts of the case and that it was a matter within the judge's discretion. See also *R v Roberts & Witney* (1967) Cr Law Review 477; *R v Russell* (1968) 52 Cr App R 147 and *R v Purnell* (1968) Cr Law Review 449.

In the instant case the trial judge reviewed the entire evidence against the appellant and arrived at the conclusion that PW28 and PW32 were speaking the truth when they said that the bills were prepared by the appellant and typed by PW32 and were subsequently signed and stamped by PW28. This is a finding of fact which the Court of Appeal accepted and which this Court sees no reason to disturb.

The trial judge having so found, failed to state whether they were accomplices or whether they had some purpose to serve.

The question whether or not a witness is an accomplice is one of mixed fact and law depending on the circumstances of the particular case. Throughout his judgment the trial judge did not advert his mind as to whether PW28 could be regarded as an accomplice or a witness who had a purpose to serve.

In dealing with this issue the Court of Appeal said, inter alia, that "nowhere did the judge make any findings that PW28 was an accomplice and "since he did not make such finding, it was not necessary for him to advert his mind to any evidence or corroboration". This is quite an erroneous proposition; the fact that the judge did not make any finding that PW28 was an accomplice did not absolve him from considering whether he (PW28) should be regarded as such.

As stated earlier the Court of Appeal held that PW28 was neither an accomplice nor a witness who had a purpose to serve. We are in agreement with this. In these circumstances the trial judge was under no obligation to warn himself of the danger of convicting on the uncorroborated evidence of that witness.

With regard to PW32, again the trial Judge did not make any finding as to whether he was an accomplice or a witness who had a purpose of his own to serve and he did not warn himself of the danger of convicting on his uncorroborated evidence. The Court of Appeal held that he was not an accomplice. We entirely agree.

However, the Court held that he was a witness who had a purpose to serve. It is not quite clear what purpose of his own this witness could have had to serve but assuming, without deciding, that the witness had a purpose of his own to serve, the trial judge merely had a discretion to warn himself of the danger of convicting on his uncorroborated evidence. The judge was under no obligation to warn himself of this danger.

In those circumstances it cannot be said that he erred in law in failing to warn himself.

It was therefore not necessary to apply the provisions of s 58(2) of the Courts Act No. 31 of 1965.

In our view the evidence against the appellant was clear and overwhelming, and we find no justification to interfere with the conviction. Accordingly this Court upholds the conviction, and the appeal is therefore dismissed, and the conviction and sentence are confirmed.

Hon Mr Justice E Livesey Luke CJ: I agree. **Hon Mr Justice OBR Tejan JSC**: I agree. **Hon Mrs Justice AVA Awunor-Renner JSC**: I agree. **Hon Mr Justice S Beccles Davies JSC:** I agree.

Reported by Caroline AB Sesay