Privy Council Appeal No. 36 *of* 1948

Emmanuel Yao Boateng - - - - - - - - *Appellant*

v.

The King - - - - - - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH JUNE, 1949

Present at the Hearing :

LORD OAKSEY
LORD REID
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal by special leave from a judgment of the West African Court of Appeal dated the 21st November, 1947, dismissing an appeal from a judgment of the Supreme Court of the Gold Coast dated the 9th July, 1947, whereby the appellant was convicted of conspiracy dishonestly to receive stolen goods contrary to sections 49 and 284 (1) of the Criminal Code of the Gold Coast, and of dishonestly receiving 1,360 yards of khaki drill knowing the same to have been stolen, contrary to section 284 (1) of the Criminal Code, and was sentenced to two years' imprisonment with hard labour on each count, the sentences to run concurrently. Three other men were jointly charged with the appellant, Salifu, accused No. 1, and Yaro, accused No. 2, who were also convicted, and Francis, accused No. 3, who was acquitted.

It is unnecessary to set out the sections of the Criminal Code under which the appellant was convicted since nothing depends on their terms. The question in the appeal is whether the appellant dishonestly received the khaki drill in question knowing it to have been stolen.

The trial was conducted before a judge and three assessors. The relative duties of judge and assessors in a criminal trial are governed by section 286 of the Criminal Procedure Code of the Gold Coast which is in the following terms :

> " Section 286.—(1) When, in a case tried with assessors, the case on both sides is closed, the judge may sum up the evidence for the prosecution and the defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.
>
> (2) The judge shall then give judgment, but in doing so shall not be bound to conform with the opinions of the assessors.
>
> (3) If the accused person is convicted, the judge shall pass sentence on him according to law."

Two points were taken by the appellant. First, that the learned judge did not give a judgment as required by section 286 of the Criminal Procedure Code, and secondly, that there was no evidence upon which the appellant could be properly convicted.

The first question can be disposed of shortly. The learned judge summed up the evidence to the assessors, as he was entitled to do under section 286 (1), explaining the matters for determination. He discussed

the evidence in detail pointing out which witnesses should be regarded as accomplices, and warning the assessors of the danger of acting upon the evidence of accomplices without corroboration. At the conclusion of the summing up the assessors gave their opinions, all of them holding the appellant to be guilty on both counts. The learned judge then stated that he accepted the opinions of the assessors, found the appellant guilty on both counts, and passed sentence upon him. The argument for the appellant is that the learned judge did not bring his own mind to bear upon the case, but treated the assessors as a jury, and left the decision upon the facts to them, and reliance is placed on the decision of this Board in *Joseph* v. *The King* (1948 A.C. 215). That was an appeal from the Supreme Court of Fiji, and the Criminal Procedure Code of Fiji in section 157 contains a provision, similar to that in section 367 of the Indian Code of Criminal Procedure, that a judgment must contain the point or points for determination, the decision thereon, and the reasons for the decision. No such provision is to be found in the Criminal Code of the Gold Coast, but it is contended that notwithstanding this omission a judgment which does not embrace these three matters is not a judgment within section 286 (2). It is obviously desirable that a judgment in a criminal case should show the points for determination, the decision thereon, and the reasons for the decision, but their Lordships find it unnecessary to determine whether this is compulsory under the Criminal Procedure Code of the Gold Coast since in their view the judgment of the learned judge did in fact cover these three matters. Their Lordships naturally assume that the trial judge was familiar with the provisions of the local Procedure Code, that he appreciated that he was not bound by the opinions of the assessors, and that, when he accepted their opinions, he did so because he agreed with them. The summing up of the learned judge, his acceptance of the opinions of the assessors, and the observations which he made in convicting the accused leave no doubt in their Lordships' minds as to the points which the learned judge thought arose for determination, his decision thereon, and the reasons for the decision. The facts are quite different from those in the case of *Joseph* v. *The King* in which the trial judge treated the assessors as though they were a jury, left the appreciation of evidence to them, and allowed them to bring in a verdict of guilty which he accepted without expressing his own view of the evidence or specifying the sections of the Penal Code under which the accused was convicted.

Upon the second question, it is admitted by the appellant that 1,360 yards of khaki drill were stolen from a government depot at Takoradi in which Salifu, the first accused, was a watchman ; that the cloth was taken to Nkontompo where it was under the control of Yaro, the second accused ; that Yaro asked Francis, the third accused, if he could find a purchaser for the cloth ; that Francis, who had worked with the appellant, asked the appellant if he could find a purchaser : that the appellant mentioned the name of Kunadu, a store keeper at Sekondi where the appellant lived, as a possible purchaser ; and that Kunadu purchased the cloth. The appellant's case is that he was merely an innocent medium, that he told Kunadu that he wanted a purchaser for some khaki drill which had been purchased at an auction sale, as he had himself been told, and that he himself took no part in the sale except that he admits having helped to obtain a lorry to bring the goods from Nkontompo to Sekondi. The Crown's case is that the appellant bought the khaki drill from Yaro for £100 and sold it to Kunadu for £279, and that he knew that the goods were stolen.

As already stated the learned trial judge dealt fully with the evidence in his summing up to the assessors. In appeal to the West African Court of Appeal the court dealt with the matter shortly. The learned judges thought there was no substance in any of the grounds of appeal, but they noted that the trial judge was in error in one point in his summing up in suggesting that Yaro had said that the price obtained for the cloth was £100 and that the appellant re-sold it to Kunadu at more than double what he had paid for it. They thought, however, that this mistake on the part of the learned judge did not affect the result, and they attached particular importance to an episode which had taken place at the police station when the appellant was being questioned.

The evidence with regard to payment for the khaki drill was this. Kunadu said that he paid the appellant £279 for the cloth, admittedly a fair price. He says that he had £190 in hand and borrowed £89 from one Mensah. The borrowing was confirmed by Mensah. Yaro in his evidence said that he was paid £100 for the cloth by Kunadu, but in a statement which he had made to the police he had said that the appellant had paid £100 to Francis, who subsequently handed it over to himself, Yaro. Francis confirmed this. The statement of Yaro to the police was not evidence against the appellant, and the judges in the court of appeal seem to have thought that the mis-statement in the summing up of the trial judge was based on Yaro's statement to the police. The statement was, however, properly put to Yaro in cross-examination and in the light of it the learned judge and assessors may well have disbelieved Yaro's statement that the £100 was paid by the appellant. The trial judge and the assessors were entitled to believe the evidence of Kunadu, corroborated as it was in an important particular by Mensah, that he paid £279 to the appellant as the price of the goods, and if this evidence be accepted it follows that the £100 paid to Yaro must have been paid by the appellant to enable him to secure the goods for resale to Kunadu, and that Yaro was lying when he said that it was Kunadu who paid him £100. The episode at the police station on which the court of appeal relied was this. Sub-Inspector Amaning said that when the accused was being questioned at the police station he asked if he might put a question to a man who was there. On receiving permission to do so the appellant said to the man "Were you not present when I paid £279 to Yaro and Francis in my office?" The man replied "No I was not present". This episode was confirmed by the evidence of Musa Kado, the man to whom the question was put, and the significance of the episode is two-fold. In the first place it shows that the accused was aware of the exact figure at which the cloth was sold; and secondly it suggests that in the first instance the accused was going to allege that he had paid full value for the cloth, thus negativing any suggestion of a guilty knowledge as to its origin, and that it was only when he failed to get a witness to support this story that he denied having sold the goods. The episode is difficult to reconcile with the innocence of the appellant.

Apart from the evidence as to the payment of the purchase money, there is a lot of evidence showing that the appellant took a much more active part in disposing of the goods than he admits having done. There is evidence that it was the appellant who engaged a lorry to fetch the goods from Nkontompo to Sekondi, that the lorry was sent on two occasions and that on each occasion the appellant told the driver of the lorry a false story that the lorry was required to fetch a patient, and that it was the appellant himself who paid for the lorry, a sum considerably in excess of the normal fare. In their Lordships' view there was ample evidence on which the trial judge could hold that it was the appellant who sold the khaki drill to Kunadu, and that when he did so he knew that it had been stolen.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed.

Note.—After this judgment had been prepared their Lordships were informed by the solicitors for the appellant that section 286 (2) of the Code of Criminal Procedure of the Gold Coast had been repealed as from 12th April, 1947, that is before the date of the trial, by Ordinance 8 of 1947, and that there had been substituted therefor a clause substantially in the terms of section 367 (1) of the Indian Code of Criminal Procedure. Their Lordships must express their astonishment that the advisers of the appellant should have failed to discover an amendment of the section of the Code on a breach of which their case rested, an amendment made shortly before the trial and helpful to the case they desired to raise in appeal.

Their Lordships find it unnecessary to add anything to the foregoing judgment except to note that the judgment of the trial judge was signed by him and dated.

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In the Privy Council

EMMANUEL YAO BOATENG

v.

THE KING

DELIVERED BY SIR JOHN BEAUMONT

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