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Judgment  
15, 1966

IN THE PRIVY COUNCIL

No. 18 of 1965

ON APPEAL FROM

THE COURT OF APPEAL FOR SIERRA LEONE

SALIM RAKAR

-v-

THE QUEEN

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CASE FOR THE RESPONDENT

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HATCHETT JONES & CO.,  
90 Fenchurch Street,  
LONDON, E.C.3.

ON APPEAL FROM

THE COURT OF APPEAL FOR SIERRA LEONE

B E T W E E N:

SALIM RAKAR

Appellant

-and-

THE QUEEN

Respondent

CASE FOR THE RESPONDENT

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- 10 1. This is an appeal by Special Leave from the Judgment of the Sierra Leone Court of Appeal dated the 24th day of October, 1964, dismissing the Appellant's appeal against his conviction by the Criminal Sessions of the Supreme Court of Sierra Leone (Cole P.J. and a Jury) held at Freetown on the 7th day of April, 1963, upon a charge of robbery with aggravation. pp 80-81  
pp 76-78  
p 64
- 20 2. The Appellant was tried with two others on a charge of robbery with aggravation contrary to Section 23 (1) (a) of the Larceny Act 1916 in that they with others on or about the 30th day of August, 1963, between mile 40 and mile 41 in the Freetown-Bo Road in the Port Loco District of Sierra Leone, together robbed Olivio Paolo of one black tin trunk, £6,000 in money and one car key, the property of Messrs. Vianini Company Limited while in the custody of the said Olivio Paolo. pp 1-2
- 30 3. Five persons, namely Joseph Sabrah, George Thomas, (sic; name should be Thorne), Salim Rakar, Abu Bakarr Taylor-Kamara and Claudius Thomas were charged, but the 4th accused was absent at the commencement of the trial and there was a direction by the trial judge that he should be tried separately, and in the case of the 5th accused a nolle prosequi was entered by the prosecution. p 7 ll 10-17  
p 6 ll 16-17
4. The principal ground of appeal is that the

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learned trial judge, having directed the jury that one Abu Bangura, a prosecution witness, might be implicated in the commission of the crime and therefore might be treated as an accomplice and needed corroboration, misdirected the jury as to evidence that was capable of being corroboration and that there was no such evidence.

5. The learned trial judge summarised the prosecution case as follows :-

p 49 1 2  
-p50 1 39

"As I understand the case for the prosecution, in short, it is that they say on or about the 30th of August this year, the second prosecution witness who gave his name as Paulo Olivio, an Accountant of Messrs. Vianini (Sierra Leone) Limited, travelled in one of the Company's cars driven by one Abu Bangura to Freetown for the purpose, among others of collecting money from one of the banks in Freetown. Olivio went to their office at Signal Hill Wilberforce, and, you were told, he received the company's cheque for £6,000 which cheque he took to Barclays Bank the same day and cashed. At the time, he was accompanied by the driver. The money was put in a black tin box after it had been checked, locked up in the box, the box, was put in the car and taken to the office of the Company at Signal Hill, where the money was again checked and left locked up in a safe. Later on that same day, the money was taken out of the safe, checked again, put inside the box, locked up there, the box put in the boot of the car and again the car was driven off by Abu Bangura with the witness inside to, among other places, Fourah Bay Road where they bought bread after which the car eventually left still with the witness for its destination at Rokel. When the car thus left Freetown, besides Olivio and the driver, the occupants were Cécil Max George and Mrs. Priglochi a pregnant woman. At the time, according to the prosecution's case, there were in the car, among other things, the tin box containing the £6,000

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and the car key with which, of course, the car was being driven.

10 Not far from mile 40, a stationary volkswagen car was spotted facing the direction in which the company's car was travelling and as it went near, the volkswagen started to move slowly in a zigzag manner. Some men were in that volkswagen car. One witness said that Abu Bangura sounded the horn of his car; another witness said there was no sounding of any horn. The volkswagen car, however, continued to zigzag in front of Bangura's car until both cars got to a portion of the road where a dual carriageway began. The volkswagen car which was light green in colour drove for some distance on the same route, and, you were told, stopped suddenly, whilst the other car was still

20 coming behind. The company's car also stopped because the road was blocked by the volkswagen car. Soon after, some men rushed from the volkswagen car on to the company's car one of them holding a pistol which he pointed it, at least one of the occupants of the company's car, while three other men rushed on to the other side. You were told that the man who was carrying the pistol was partly masked having a handkerchief over part of his face up the mouth from the bottom of the face. You were

30 also told that the men wore trousers, one of them at least carried an axe, another a machet and another a gun. You were told that the man who had the pistol rushed back to the volkswagen car, returned with another pistol which he pointed again at the occupants of the other car and said "surrender". You were told also that

40 Bangura was forced out of the car and after some conversation between himself and some of the attackers and Olivio, he was forced to give up the key of the car and you were told that almost at point blank range of the pistol Bangura was taken to the back of his car, asked to open the boot, which he did, and while, at the same

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time, the other occupants were still being held up, the tin containing all the money was taken out of the boot to the volkswagen car by which time that car had changed course facing the direction of Freetown on the other side of the dual carriageway. About a few feet past the company's car, you were further told, the volkswagen car stopped where the box of money was loaded, the attackers demanded the key of the car from the driver who handed it over and it was taken away, after which the four attackers boarded their get-away car and drove off. But, you were also told, before the car was driven away, the attackers were joined by two men who had come out of the bush on one side of the road."

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p13 1 15  
-p16 1 49  
p20 1 11  
-p21 1 29

6. The only witness who purported to identify the Appellant as one of the persons taking part in the robbery was Abu Bangura, the driver of the car. This witness had testified that prior to the robbery, the 4th accused who was also an employee of Vianini Company Limited had approached him on two occasions suggesting that they make arrangements to steal the money that was to be conveyed in the car, but that he had not taken him seriously.

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7. The 1st accused was identified by another passenger in the car, but the 2nd accused was also only identified by Abu Bangura.

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p36 1 3  
-p38 1 13

8. One Sallu Conteh also gave evidence that on the 2nd of September, 1963, he saw all three accused together at a house in Dan Street and drove the 1st accused and the Appellant with another man to a particular house in Mano from which they took a suitcase and returned to Freetown.

pp 30-31

9. There was evidence that in the house of an aunt of the 1st accused in Mano was found four bundles, each containing twenty £5 West African currency notes totalling £400 with the stamp of Barclays Bank and the date 20th August, 1963. The stolen money had been drawn from Barclays Bank, Freetown on the 30th

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August, 1963 and inter alia contained £2,000 in £5 West African currency notes.

10. The Appellant gave evidence that he was ill in bed for the whole of the 30th August, 1963, but agreed that he went with the 1st accused to Mano on the 2nd September 1963, but that he knew nothing about the robbery or the contents of the suitcase. pp43-46

11. The summing-up of the learned trial judge included the following passages :-

10 "In a case of this nature where more than one accused person are charged, it is my duty to tell you that you must consider the evidence against each accused person separately: it is not because you find one or other of them guilty of either the offence charged or one or other of the alternatives I have mentioned to you that you must say that the other are guilty: you must be satisfied on the evidence after considering it against each of them in the dock that he is guilty of either the offence charged or one or other of the alternatives which I have explained to you before you can return a verdict of 'guilty'. p48 l 28 -p49 l 1

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Statements have been put in evidence, and, as you have been told by counsel in their closing speeches, the statement of one accused person is not evidence against either of the other two accused where such a statement is not made on oath in the presence of them."

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30 "The prosecution did not stop there; they proceeded with their investigation in the course of which they took statement from the first accused - a statement which you may consider to be a confession. Objection was taken by him to the statement going in evidence on the ground that he did not make that statement. I however admitted it in evidence because as far as the law is concerned there is not evidence that it was made under threat or duress or that it was made by means of any hope of reward being set out to him by the Police or any one in authority; he merely said that it was not his statement. Nevertheless, the fact that I admitted the statement in evidence does not p53 l4-38

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necessarily mean that you must accept it. You must examine the evidence as a whole and be satisfied that the 1st accused made that statement. If you are so satisfied that he made that statement, then consider what weight you are going to give to it. As I say, it is evidence entirely against himself and nobody else. It is true that he did not sign the statement, which is something you must bear in mind, but you heard not only Smith but also Commissioner Wales who swore that it was the accused who in his presence made the statement." 10

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p 56 l 28 "You may feel that in those circumstances Bangura  
-p57 l 11 has come within the category of persons known as accomplices in law; you may feel that from his behaviour he knew beforehand what was going to happen; that by his conduct he is implicated in the commission of the crime. But that is entirely a matter for you. My duty nevertheless is that I should direct you that where there is evidence which any reasonable jury, which I take it to be you constitute, can say that a witness was a participant; that in this case Abu Bangura was an accomplice either expressly or by his conduct, then I must tell you that it would be dangerous to convict on his evidence alone. You must look for corroboration of his story, that is if you so find that he is an accomplice. You could, however, accept his evidence. And corroboration in law means some evidence, apart from that of the accomplice, which materially implicates an accused person in the commission of the crime; that is, if you find that Bangura is an accomplice either by his conduct or otherwise, you must go further and consider whether there is evidence besides his which you can accept and which implicates the first accused and for that matter any of the other accused in the commission of the crime. 20 30

It is my duty also to tell you what in law is capable of being considered as corroboration, and it is for you to find out whether in fact there is such corroboration." 40

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10 "The third accused was again identified by only Bangura after the latter had been in custody for about three days and after he had told the police that he could not identify any of the attackers. You may feel that he had something he was hiding. But that is entirely a matter for you. Apart from being identified as one of those who were seen at the scene, he was seen in the house of the first accused on the 2nd of September. He and first accused left by car for Mano that day, went inside the house at Mano and came out again boarded a car and returned to as far as Wellington with the suitcase according to the prosecution, containing the money. That also is entirely a matter for you. The prosecution say that the surrounding circumstances are such from which you can say the first and third accused or one of them was one of those who committed the offence.

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What I told you about accomplices applies here also. You must look for corroboration if you find that Bangura was an accomplice. The corroboration must be one which materially implicates the third accused in the commission of the crime.

30 Then again what I said about the conflicts and contradictions applies here also; Wales and others said that the description of the attackers which was given to him had guided him in the conduct of the identification parade and so he had those on parade all dressed up. That is entirely a matter for you. There is this, however, that the third accused was not picked out at the parade. The defence is entitled to rely on it. They say that Bangura was not a reliable witness. As far as third accd's trip to Mano is concerned, I made some caustic remarks when he the third accused was giving evidence but you are the judges of facts. I am not, as learned counsel for the defence put it an ordinary person. You are the ordinary persons who, like the third accused would tell whether a man who had been ill for three days would leave Freetown and go to Mano just for a joy ride. Whatever I say, do not be influenced by my remarks; make up your minds yourselves.

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The third accused anyway said he went to Mano because he had nothing to do and that his friend the first accused was going to Mano to see his aunt; they did not meet the aunt; that he came back. He denied alighting at Wellington as Sallu Conteh had said. If you believe the story of the third accused, then he was not at the scene - he is not guilty at all.

10           What I have said about alibi applies also to the third accused and it is for the prosecution to prove their case that not only was the offence committed but also the third accused was one of those who committed it. When he was charged he made a statement in which he said "I have nothing to say now. I reserve my defence. In the court below.

20           Learned Counsel for the third accused quite rightly pointed out a bit of evidence in which Bangura said the third accused was armed with a gun. He pointed out that he never said that before the Magistrate. You will recall that when he was pressed under cross-examination he admitted that he did not say so in the lower court. You must take all that into consideration whether or not he should be believed. Bangura was also reported to have said he could not, at first, identify the third accused. Later on he Bangura said that he might identify him. Here in this court  
30           he emphatically pointed out the third accd. As I said, you may feel that Bangura had something he was trying to hide. You as the judges of ordinary people would have to consider Abu Bangura's behaviour in this case. If you do not accept Bangura's story then the third accused is not guilty. If you have any reasonable doubts give him the benefit of those doubts. If you still cannot make up  
40           your minds, after having considered all the evidence, that he took part in the crime, that he was there, never mind whether or not he was suffering from asthma, then say he is not guilty."

12. The jury found the last accused guilty unanimously, the 2nd accused guilty by a majority of 9 to 3 and the Appellant guilty by a majority of 8

to 4 and the 1st accused was sentenced to 10 years imprisonment and the 2nd accused and the Appellant were sentenced to 7 years imprisonment each.

13. The appeal by all three accused to the Sierra Leone Court of Appeal was dismissed on the 24th day of October, 1964, Ames P. holding :-

10 "At the trial, Abu Bangura identified the three appellants as three of the men who got out of the Volkswagen. There was evidence which went to show that Abu Bangura might have been accomplice of the robbers. In his summing up the learned judge drew the jury's attention to it, and said that in the circumstances they might think that Abu Bangura was an accomplice. He directed them as to what an accomplice is, warned them of the danger of convicting on the evidence of an accomplice without corroboration, explained what was meant by corroboration and indicated to them evidence which was capable of being corroboration.

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p77 1 31  
-p78 1 19

Some of the grounds of appeal attacked these directions, but we found no substance in them and did not call upon the respondent to reply to the arguments.

30 The other grounds were that the verdict was unreasonable and such as could not be supported having regard to the evidence. The argument about these concerned the weight and probative value of the evidence which the prosecution relied on as corroboration.

We do not know, of course, whether or not the jury did indeed regard Abu Bangura as an accomplice. Supposing, however, that they did, and supposing also that they heeded the learned judge's warning as to the danger of convicting without corroboration, in our opinion there was sufficient corroborative evidence to warrant their verdict.

The appeals are dismissed."

40 14. Special Leave to appeal to Her Majesty in Council was granted by Order in Council, dated the

pp80-81

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14th day of January, 1965.

The Respondent respectfully submits that this appeal should be dismissed for the following (among) other

R E A S O N S

- (a) BECAUSE, if the witness Abu Bangura was to be treated as an accomplice, the learned trial judge's direction was adequate and proper.
- (b) BECAUSE the learned trial judge did not misdirect the jury as to evidence that could corroborate the witness Abu Bangura.
- (c) BECAUSE there was corroborative evidence of the witness Abu Bangura.
- (d) BECAUSE the summing-up by the learned trial judge was adequate and proper.
- (e) BECAUSE there was no miscarriage of justice.
- (f) BECAUSE the Sierra Leone Court of Appeal was correct to dismiss the appeal.

THOMAS O. KELLOCK

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