Privy Council Appeal No. 32 *of* 1955

Thomas Cole Conteh and others - - - - - - - *Appellants*

v.

The Queen - - - - - - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH DECEMBER, 1955

Present at the Hearing:

LORD OAKSEY
LORD TUCKER
LORD SOMERVELL OF HARROW

[*Delivered by* LORD SOMERVELL OF HARROW]

This is an appeal by special leave against a decision of the Supreme Court of Sierra Leone finding the appellants guilty of a conspiracy to accuse Paramount Chief Alfred Bockari Samba and others of having committed a crime namely murder.

The conviction was on the 30th December, 1953. On the 14th January the appellants applied for extension of time to file notices of appeal, time having expired on the 10th. Leave was refused and special leave was given to appeal against that refusal. Their Lordships having decided to hear the appeal from the conviction, found it unnecessary to consider the refusal to extend the time or make any order thereon.

The present proceedings were a sequel to an unsuccessful prosecution for murder. On the 9th May, 1953, the dead body of a man called Fogundia was found within the chiefdom of Samba. On the sworn information of two of the present appellants four persons were charged with the murder. It was said that Samba was a cannibal and had directed the four to murder Fogundia. It is not clear why Samba who was arrested was not charged. This story was supported by one of the then accused until the trial. He then retracted and said that he had been bribed to give false testimony by the appellant who wanted Samba's removal. The present appellants supported the prosecution but the accused were acquitted. These proceedings followed Samba being the principal complainant.

The gist of the offence charged is that the accusation should be false to the knowledge of those conspiring. It is of course no offence for people who believe that a crime has been committed to agree to take steps with a view to a prosecution.

The trial was one with Assessors. The first submission on behalf of the appellants is that the learned Judge failed to state clearly or at all the necessity of the prosecution establishing that the accused knew the accusation to be false. It is clear that some of the accused stated affirmatively that they believed in the accusation. Some may have merely denied that they were parties to any agreement.

Two passages from the summing up should be quoted.

> "To conspire to accuse any person of murder is to conspire to do an unlawful thing. The law does not say that you should not bring to the notice of the Police any offence which you know to

have been committed. If you know that an offence has been committed it is your duty and the duty of everyone to bring it to the notice of the Police and the Police will then investigate the matter. There is no need for two or more to join together, to make a bargain to accuse any person or persons of a crime. Such a conspiracy the law does not allow.

"It is your duty to find out if there is evidence of any agreement by any of the accused with the other accused or with other persons not before you. To do something unlawful is to accuse the P.C. and three men of the murder of Siaffa Fogundia."

In nearly every summing up in a case of any complexity it is possible to find sentences which in the calmer and more leisurely atmosphere of an appellate court can be shown to be capable of improvement. But here the defect goes to the root of the offence. It is true that in the course of his summing up the learned judge referred to evidence which if believed would support an agreement falsely to accuse. But nowhere is there a reference to the necessity of proving the falsity of the belief. The first of the two passages might well have been understood by the Assessors as meaning that any agreement by two or more to make an accusation whether believed or not would be an offence.

The Crown did not file a case or seek to support the conviction.

Their Lordships are of opinion that the appeal succeeds on this ground. There were other grounds put forward to only one of which is it necessary to refer. At the beginning of the proceedings Counsel for the six accused objected to one of the Assessors, Musa Gendemeh on the ground that he was married to a daughter of Samba the object of the alleged conspiracy and the first witness for the prosecution. The Solicitor-General opposed the objection and the learned judge ruled as follows:

"I find that the objection is misconceived. There is nothing in the Ordnance, cap. 50, which gives a right to object to an Assessor's sitting on a case, and if there were such a right I am not satisfied that sufficient reason has been given to disqualifying P.C. Musa Gendemeh sitting on this trial as an assessor."

Notwithstanding the silence of the Ordnance their Lordships are clear that the objection was not misconceived. It might or might not have been proper to accede to it. Either party, the Crown or the accused is entitled to raise an objection to an Assessor on the ground that he is interested in or connected with the subject matter of the proceedings or those concerned so that it is undesirable for him to sit as an Assessor. It would be for the judge to rule on the objection in his discretion. In small communities it may be difficult of course to find Assessors who are wholly unconnected with everyone concerned. It may be that in this case there would have been a difficulty in getting another Assessor. Apart from any such difficulty it would seem unfortunate that one of the Assessors should have been related in the degree stated to the complainant.

Their Lordships have humbly advised Her Majesty that the convictions be quashed.

Counsel for the appellants contended that the appellants ought to be allowed their costs but their Lordships do not think that the circumstances of the case justify a departure from the general rule and there will therefore be no order as to costs.

(39579) Wt. 8064—69 120 1/56 D.L.

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LORD SOMERVELL OF HARROW

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