

In the Privy Council. 1113

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INSTITUTE OF ADVANCED STUDIES

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL (GOLD COAST SESSION.)

BETWEEN—EMMANUEL YAO BOATENG ... APPELLANT AND THE KING ... RESPONDENT.

CASE FOR THE RESPONDENT

1.—This is an Appeal by Special Leave from a Judgment of the West African Court of Appeal (Harragin, Verity and Lucie-Smith, C.JJ.) dated the 21st November, 1947, dismissing an Appeal from a Judgment of the Supreme Court of the Gold Coast (Smith, J.) dated the 9th July, 1947, whereby the Appellant was convicted of conspiracy dishonestly to receive stolen goods contrary to ss. 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 s. 284 (1) of the Criminal Code, and was sentenced to two years imprisonment with hard labour on each count, the sentences to run concurrently. Of three men jointly charged with the Appellant, two (Salifu Moshie and Yaro Deman) were also convicted and one (Francis Okwuidegbe) was acquitted on both counts.

RECORD pp. 81-82 p. 63 pp. 1-2; p. 64, l. 39-p. 65, l. 14; p. 63, ll. 9-16

2.—The relevant sections of the Criminal Code of the Gold Coast are :

43.—(1) A person is guilty of dishonestly receiving any property which he knows to have been obtained or appropriated by any crime, if he receives, buys, or in any manner assists in the disposal of such property otherwise than with a purpose to restore it to the owner.

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20 49.—(1) If two or more persons agree to act together with a common purpose for or in committing or abetting a crime, whether with or without any previous concert or deliberation,

RECORD

each of them is guilty of conspiracy to commit or abet that crime, as the case may be.

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284.—(1) Whoever dishonestly receives any property which he knows to have been obtained or appropriated by any offence punishable under this Title shall be liable to the same punishment as if he had committed such offence.

p. 4, ll. 13-15

3.—At the trial the learned judge was assisted by three assessors. The relative duties of judge and assessors in a criminal trial are governed by the following section of the Criminal Procedure Code of the Gold Coast :

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. 10

(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.

4.—The prosecution led the following evidence relevant to the case of the Appellant (the fourth accused) :

p. 8, ll. 10-15

(A) About the 17th February, 1947, an Assistant Disposal Officer, Mr. Adams, visited an ordnance depot at Takoradi and saw that one of the sheds there contained 67 bales of khaki drill. At his next visit to the depot about the beginning of April, Mr. Adams found that two bales had been opened and about 1,300 yards of drill were missing. One of the windows, which had been intact at the time of his previous visit, was broken and covered with a tarpaulin. Later a further 10 bales were found to be missing. 20

p. 8, ll. 17-19

p. 9, ll. 11-15

p. 13, ll. 5-10

p. 13, l. 33-p. 14, l. 7

p. 13, ll. 34-36

p. 14, ll. 25-26

(B) Salifu Moshie (the first accused) was one of the two headmen in charge of the watchmen at the depot. Some months before the trial the other headman, John Quainoo, arriving to relieve Moshie who had been on night duty, found a hole in some glass in the roof of one of the sheds. Quainoo reported the damage to the police who without looking inside the shed covered the hole with a piece of tarpaulin. 30

p. 11, l. 26 ; p. 5, l. 13-p. 6, l. 20 ; p. 10, ll. 12-32

(C) Some time before the trial Moshie and one Yaro Deman (the second accused) asked a fisherman named Bosomprah to go in his canoe by night to a place near the breakwater at Takoradi to fetch something. Bosomprah went, accompanied by another fisherman. At the place they found three bundles on the sand and three men, one of whom was Moshie. They took the bundles in the canoe to Nkontompo, undid them, and carried the contents to Yaro's house. It was then about 3 a.m. The contents consisted entirely of khaki cloth. 40

(D) About the 23rd or 24th March, 1947, the Appellant visited one Kunadu who kept a drug store in Sekondi and asked him if he would buy some khaki drill which somebody else had bought at an auction sale. Kunadu said he would. The Appellant returned later in the day and said he would send the khaki drill next morning by his boy Francis (Francis Okwuidegbe, the third accused). Kunadu asked how much money he would need and the Appellant said about £200 would do. Kunadu first said that the second visit was at about 5 p.m., but eventually he put the first visit at that hour and the second at about 11 p.m.

p. 23, l. 22-p. 24,  
l. 8

p. 23, l. 28  
p. 25, ll. 32-33

10 (E) At about 11 p.m. on the 23rd or 24th March, the Appellant hired a lorry at Sekondi saying he wished to fetch a sick person from Nkontompo to Sekondi. The Appellant went to Nkontompo in the lorry together with the driver (Annan), the driver's mate (Mansu), Yaro and Francis. They stopped outside Nkontompo and the Appellant, Yaro, Francis and another man whom they had picked up on the way from Sekondi, went into the village. After about three-quarters of an hour the Appellant and Francis returned. They drove back to Sekondi, the Appellant explaining to Annan that the patient was not fit to travel that night. The Appellant asked to be taken to Kunadu's store. He got down there, went into a lane,  
20 and returned after a short time. They then drove to the Appellant's house, he paid Annan 10s. for this trip and told him that he would want the lorry to fetch the patient at about 5 a.m. the next morning and would send Francis to call Annan.

p. 15, l. 9-p. 16,  
l. 2; p. 20, l. 7-  
p. 21, l. 18

(F) Annan called on the Appellant at about 5 a.m. the next day. The Appellant said that if the patient was still unfit to travel Francis would take Annan to Yaro, who would give them something to bring to Sekondi. Annan then drove to Nkontompo with his two mates and Francis. Francis said nothing about the patient but directed them direct to Yaro's store where Yaro, Francis and the other two men loaded the lorry with khaki  
30 drill. They then drove back to Sekondi. Francis directed Annan to Kunadu's store and the cloth was carried into the store. They then drove to the Appellant's house. Annan saw the Appellant and told him that although he had agreed to take 7s. 6d. for the trip, he wanted £2 as the load was too heavy. The Appellant gave him £2. As he came away Annan saw Yaro, Francis and the two other men going up to the Appellant's room.

p. 16, l. 3-p. 17, l. 6;  
p. 19, ll. 15-18;  
p. 21, l. 19-p. 22,  
l. 11; p. 24,  
ll. 9-20

p. 28, ll. 1-10

(G) At about 8 a.m. the same day the Appellant called on Kunadu. They checked the quantity of the cloth and agreed on the price of £279. Kunadu paid £190 in notes at once and sent a friend to the Appellant with  
40 £89 in notes shortly afterwards. At about 10 a.m. the Appellant called on Kunadu and said he had received the £89. He did not give a receipt for either payment.

p. 24, ll. 30-42

(H) Shortly after being charged at Takoradi Police Station the Appellant asked Sub-Inspector Amaning to call a man named Musa Kado into the station. Kado came and the Appellant said to him "Were you

p. 33, l. 28-p. 34,  
l. 8; p. 36,  
ll. 6-35

## RECORD

“not present when I paid £279 to Yaro and Francis in my office?” Kado said “No, I was not present.”

p. 37, ll. 20-27

5.—At the close of the case for the Crown counsel for the Appellant submitted that there was no evidence that the Appellant was ever in possession of any of the goods. The learned judge ruled that there was a case for the Appellant to answer.

p. 37, l. 28

6.—Yaro elected to give evidence. His evidence, in so far as relevant to the Appellant's case, was that Moshie asked him to buy the khaki drill.

p. 38, ll. 16-19

p. 38, ll. 27-36

p. 38, l. 36-p. 39  
l. 5

p. 39, ll. 11-12

p. 40, ll. 26-27

p. 40, ll. 23-24

p. 43, ll. 8-21

pp. 101-103

p. 103, ll. 6-10

He refused but said he would try to find someone to buy it. He asked Francis, who as a friend of his and Francis introduced him to the Appellant. The Appellant said he could not buy the cloth but could direct Yaro to a store. The Appellant, Francis and Yaro then went to Kunadu's store. The Appellant introduced Yaro to Kunadu and then left. Yaro said it was Kunadu who paid Annan for bringing the cloth to Sekondi, and that Kunadu paid Yaro and Francis £100 for the cloth. Yaro admitted making false statements to the police, but said that a document signed by him and read during his cross-examination contained the truth except for the statement that it was the Appellant who bought the cloth. The signed document gave an account of the Appellant paying to Francis £100 in 10s. and £1 notes.

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p. 37, l. 28

p. 44, l. 16-p. 46,  
l. 5

7.—Francis elected to give evidence. He said that he had at one time been employed under the Appellant at the Social Centre. He had left that employment before April, 1947. In April, Yaro asked him to buy some khaki cloth. Francis refused, but told the Appellant about it. He did not ask the Appellant to buy the cloth, but the Appellant asked him to call Yaro. Francis introduced Yaro to the Appellant. Next day, at 7 p.m., at the Appellant's request, Francis went to Nkontompo with the Appellant, a driver and two mates, and guided them to Yaro's house. Yaro said he had not got the khaki cloth yet, so they returned to Sekondi. The Appellant told the driver to go to Kunadu's store. The Appellant got out at the store and came back after about a quarter of an hour. At about 5.35 a.m. the next day Francis went to Nkontompo with the driver at the Appellant's request. They went to Yaro's house, loaded up the khaki cloth and drove to Kunadu's store. They put the cloth inside the store and went and told the Appellant that they had done as he had asked. Francis did not see anyone pay for the khaki cloth, and did not know who paid the driver. Yaro on the same morning told Francis that he (Yaro) had received the money from Boateng. The Appellant had told him that he (the Appellant) would buy the khaki cloth. Francis confirmed the incident at Takoradi Police Station described in paragraph 4 (H) hereof.

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p. 46, ll. 9-14

p. 48, ll. 23-24

p. 37, l. 28

p. 48, l. 31-p. 50,  
l. 22; p. 53, l. 37-  
p. 54, l. 1

8.—The Appellant elected to give evidence. He said he was an Assistant Welfare Officer. He knew Francis, whom his committee had appointed to be cook at the Sekondi Social Centre. Francis was dismissed from this post before March, 1947. In March, 1947, Francis asked him if,

as Welfare Officer, he could get someone to buy some khaki cloth which a friend of Francis had bought at an auction sale. The Appellant told Kunadu, who said he would buy the cloth. About 7 p.m. the same day Francis came to the Appellant's house and said Kunadu had given him 10s. and had asked him to ask the Appellant to help him (Francis) to go to Nkontompo and see the man who had the khaki cloth. The Appellant went out and failing to get a taxi engaged a lorry. At Francis's request the Appellant accompanied him to Nkontompo. They failed to find Francis's friend at his house and returned to Sekondi. The Appellant never told  
 10 the driver he was going to fetch a patient. Francis gave the driver the 10s. which he had received from Kunadu. On returning to Sekondi they drove to Kunadu's house, and Francis told Kunadu that his friend had not been at home. At about 8.15 a.m. the next day Francis came to the Appellant and told him that he, Kunadu, and Annan had been to Nkton-  
 20 tompo that morning, had got khaki drill from Yaro and had delivered it to Kunadu's store. The same day the Appellant saw Kunadu, who said he had paid Yaro £100 for the khaki drill. Kunadu paid nothing to the Appellant. At Takoradi Police Station Inspector Amaning told the Appellant that Yaro and Francis had said that Kado was with them when  
 20 the Appellant paid them £200. The Appellant said "No." The Inspector asked him to go outside. They went out and called Kado. At the Inspector's request the Appellant asked Kado if he had been present when the Appellant gave £200 to Yaro and Francis. Kado said he had not. It was part of a Welfare's Officer duties to act as an intermediary for traders, though the Appellant had not done so before. The Appellant did not offer to help Kunadu get the drill. He accompanied Francis to Nkontompo in order to help as Welfare Officer.

p. 52, ll. 3-11 ; p. 55  
 l. 27-p. 56, l. 22

p. 52, ll. 26-32

p. 54, ll. 11-12

9.—After the case for the defendant had been closed and counsel had addressed the court, the learned judge charged the assessors. He explained  
 30 the elements of conspiracy and receiving and various points of evidence. In particular he warned the assessors that it was dangerous to convict on the uncorroborated evidence of an accomplice, but that they might act on an accomplice's evidence if they believed it, particularly if it was corroborated in some material particular. He told them that all the witnesses could or  
 should be regarded as accomplices, excepting the two police officers, Mr. Adams and John Quainoo. The learned judge then dealt with the case against each defendant separately. In dealing with the case against the  
 Appellant, he summarised the Appellant's evidence and various points on which the evidence of other witnesses contradicted it. On the question of  
 40 guilty knowledge, he said : ". . . if you believe what Yaro says that the  
 " price obtained was £100, that is to say, less than 1s. per yard, and that  
 " Boateng resold it to Kunadu at more than double that he had paid for  
 " it, then you should have solid grounds for finding conclusively that he  
 " knew at the time he was handling the khaki that it was stolen property."

pp. 64-73

p. 66, ll. 24-32

p. 68, ll. 1-34

p. 71, l. 44-p. 72,  
 l. 47

p. 73, ll. 5-11

10.—The Assessors were unanimous in finding the Appellant guilty on both counts. The learned judge said he accepted this opinion of the assessors and found the Appellant guilty on both counts. The Respondent

p. 62, ll. 16-17,  
 25-26 ; p. 63,  
 ll. 4-5  
 p. 63, ll. 9-16 ;  
 p. 73, ll. 29-36

RECORD

submits that the learned judge thus gave judgment in accordance with s. 286 (2) of the Criminal Procedure Code (set out in paragraph 3 hereof).

pp. 81-82

11.—The Appellant appealed to the West African Court of Appeal on various grounds. Giving the judgment of the Court (Harragin, Verity and Lucie-Smith, C.JJ.), Harragin, C.J., said that while there was no substance in any of these grounds, Yaro gave no evidence such as that attributed to him by the learned judge in the words quoted in paragraph 9 hereof, and that alone might have been fatal. Harragin, C.J., however, considered that the evidence of Sub-Inspector Amaning and Musa Kado about the incident at Takoradi Police Station (mentioned in paragraph 4 (H) hereof) was reliable evidence to the same effect. The Appeal, therefore, was dismissed. Harragin, C.J. made no reference to the Appellant's explanation of the incident at the Police Station. 10

12.—The Respondent submits that the evidence, even accepting the Appellant's explanation of the incident at Takoradi Police Station, was amply sufficient to establish the Appellant's guilty knowledge and to justify the assessors and trial judge in finding the Appellant guilty on both counts.

13.—The Respondent therefore submits that the judgment of the West African Court of Appeal should be affirmed and that this Appeal should be dismissed for the following amongst other 20

### REASONS

1. BECAUSE the learned trial judge gave judgment in accordance with section 286 of the Criminal Procedure Code.
2. BECAUSE, if the summing-up of the learned trial judge contained any inaccuracies, such inaccuracies were not of a nature which required the West African Court of Appeal to quash the Appellant's conviction.
3. BECAUSE if there were such inaccuracies they did not bring the case within the principles upon which His Majesty in Council grants relief in criminal cases. 30
4. BECAUSE the evidence established the guilt of the Appellant.

FRANK GAHAN.

**In the Privy Council.**

No. 36 of 1948.

ON APPEAL FROM THE WEST AFRICAN COURT  
OF APPEAL (GOLD COAST SESSION).

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BETWEEN

EMMANUEL YAO BOATENG

APPELLANT

AND

THE KING ... .. RESPONDENT.

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CASE FOR THE RESPONDENT

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