



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO 1428 OF 1990

LEONARD SOLOO RINGOSAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No 1685 of 1986 of the Senior Resident Magistrate's Court at Nakuru: O G Githinji: Esq)

JUDGMENT

The appellant, Leonard Soloo Ringos (original A 2) was convicted after trial by the learned Senior Resident Magistrate, Nakuru on 5 counts of the offence of stealing contrary to section 275 of the Penal Code. He was sentenced to serve 9 months imprisonment in respect of each count. The sentences were to run concurrently. His appeal to this Court is against both conviction and sentence.

The case for the prosecution against the appellant was that at the material time, he was a postal clerk at Quarry Road Post Office, Nairobi. He was working in the money orders section. At the said Post Office, one John Bosco Kimani (original A 1) had a savings account No NAI /9860. Sometimes on the 11th of June, 1984, the said Kimani purported to have deposited in his A/c a sum of Shs 4,450/- which was reflected in his pass book whereas in actual fact, no such deposit was made. Thereafter, he continued to withdraw various sums from the Post Office with the assistance of the employees of the Post Office. By the time the irregular withdrawals were discovered, this account was overdrawn to the tune of Shs 7,864/27. It was the prosecution case that the appellant and another postal clerk, Wilson Kokeiya Naisamia (original A 3, who was jointly charged with the appellant but was acquitted of the charge), had jointly with the account holder (A 1) stolen various sums that had been withdrawn from this account.

I am satisfied that there was abundant evidence in the court below to show that the savings account of the 1st accused was being irregularly operated. There was sufficient evidence which indicated that he had not deposited the sum of Shs 4,450/- which was reflected in his passbook and the entry of that amount in his passbook was in fact forged. Against this amount, he continued to withdraw various sums from the Post Office giving rise to the charges that were laid against him and the appellant in counts 2 to 6. These payments were not reflected in the passbook contrary to the Post Office regulations. Apart from the payment of Shs 1,000/- made on the 16th of August, 1984, the subject of the charge in count 2, the rest of the payments made on the 21st of August, 1984, 24th of August, 1984, 29th of August, 1984 and 30th of August, 1984 were effected at the counter of one Gladwin Gathigia (PW7) and it was her stamp that was used. She however, shifted the blame on the appellant who was working in the money orders section saying that he was the one who made the offending payments in her absence at her counter, she stated:

“My counter is the one that paid out. I am the one who balances them. My date stamp appears on all forms. Whenever I was away, I used to leave you at my counter. We never signed for this as this

was a local arrangement.”

The appellant in his defence denied having made all these payments as alleged. Even when his specimen writings were taken for examination by the document examiner, Mckenzie Mweu (PW9), he was found not to have been involved in the said payments.

The conviction of the appellant was therefore based largely on the evidence of his colleagues at work, Lydia Misumi (PW6) and Gladwin Githigia (PW7). PW6 is the one who prepared the list reflecting the payment made to the 1st accused on the 16th of August, 1984 while PW7 as I have already stated, is the one whose counter and stamp was used in the rest of the payments.

It was submitted by counsel for the appellant that these witnesses (PW6 and PW7) were accomplices and it was not safe to convict on their evidence without the necessary caution or to act on such evidence without corroboration. Indeed the investigating officer, Justus Njeru (PW8) found that Kabue (PW7) had made payments to the 1st accused without the passbook being presented. Similarly the Post Master, George Allan Gatumbi (PW 8A) had made payments to a brother of the 1st accused from the said account in the absence of the a/c holder or passbook. It is clear that the Post Office regulations regarding the operations of savings a/c were flouted. Learned magistrate found it difficult to pin the blame regarding these irregular payments on any one clerk as each of them was throwing the blame to the other. He stated as follows in his judgment:

“This case became extremely complex and the pinning of blame or its apportionment became tedious as it involved insiders at the Post Office. It also assumed grave difficulties in the sense that those charged with the responsibility of maintaining special date stamps completely flouted Postal rules in relation thereto. I do not blame them specifically as even in my own experience conditions at work sometimes denied the bending of rules to suit ends of trust and collective accountability on behalf of all employees.”

There was direct evidence of the involvement of PW6 and PW7 in these irregular payments relating to the a/c of the 1st accused. That being so, the learned magistrate ought to have made a finding that they were accomplices and to look for independent and reliable evidence to corroborate their testimony in which they shifted the blame to the appellant. There would however be no need for corroboration if the trial magistrate found their evidence as falling within the rare exception where the accomplice evidence is exceptionally cogent and credit worthy, in which case it would be safe to convict without corroboration (see section 141 of the Evidence Act *R v Boskerville* (1916) 2 KB 658; *Murungi Njau v R* (1929) KLR 257).

PW6 and PW7 were clearly accomplices in this case. Generally the uncorroborated evidence of an accomplice should be held to be untrustworthy for three reasons – namely: (1) because the accomplice is likely to swear falsely in order to shift the guilt from himself; (2) because as a participator in the crime he is an immoral person who is likely to disregard the sanctity of an oath; and (3) because he gives his evidence under promise of pardon or in expectation of an implied promise of pardon and is therefore liable to favour the prosecution (see *Emperor v Maganlal* (14, Bom 119)).

The court below having failed to make a specific finding that PW6 and PW7 inspite of their involvement or role in the crime were creditworthy it follows that in the absence of any corroboration of their testimony, the conviction of the appellant on such evidence was unsafe. If we take aside the evidence of PW6 and PW7, then there would be no evidence upon which the appellant could have been properly convicted. Even the Postal Superintendent under whom they were working, Charles Ngethe (PW5) was found by the trial magistrate to have been confused and unreliable. He then went on to acquit Wilson Kokaiya Naimasia (A3) who was jointly charged with the appellant for lack of corroboration. In my view, he should have done so with the appellant as well.

All in all, upon my consideration and evaluation of the record of the Court below, I find it unsafe to uphold the conviction of the appellant in all counts. His appeal therefore succeeds. I quash the conviction of the appellant on each of the 5 counts and set aside the sentence that was imposed. I order that he shall

be set free and be released forthwith. It is regretted that he has by now served the whole sentence.

Dated and delivered at Nairobi this 18th day of November 1992

S.O OGUK

JUDGE