

IN THE FEDERAL COURT OF APPEAL, KADUNA
30TH MARCH, 1979. FCA/K/98/78
CORAM :- M. L. UWAIS, A. ADEMOLA, A. B. WALI, JJCA

AUGUSTINE OGWUCHE APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL LAW - Bribery and corruption - Public officer accepting gratification s. 115 (b) Penal Code - The charge in this case was not proved beyond reasonable doubt.

CRIMINAL LAW - Bribery - Charge of receiving N200 bribe - Where a witness is not a victim of extortion but a giver of bribe - His evidence must be corroborated.

CRIMINAL PROCEDURE - Corroboration - Evidence of an accomplice must require corroboration - Where other available evidence fail to afford such corroboration - The case is not proved beyond reasonable doubt.

EVIDENCE - Witnesses - Unreliable witness - Where a witness's testimony in court is different from his proof of evidence - He should be regarded as an unreliable witness.

EVIDENCE - Witnesses - Variation in evidence - As to place and time of alleged crime - When not to be easily glossed over.

FACTS

The appellant, an Assistant Price Control Inspector was tried in the Makurdi High Court for an offence of directly accepting gratification of N200.00 from one Emmanuel Igbago (P.W 2) as motive for showing favour in the exercise of his official function, an offence punishable under s.155 (b) of the Penal Code. The prosecution called witnesses whose evidence were contradictory and varied as to the issue of time

and place of crime. The fact that the 2nd PW was charged to court and convicted at the appellant's instance was not taken into consideration by the trial court. The prosecution sought to establish that N200.00 marked currency notes were recovered by the police in a jacket belonging to the appellant within appellant's room.

The trial court found him guilty as charged and sentenced him to a fine in lieu of terms of imprisonment. Being dissatisfied, appellant appealed to the Court of Appeal.

ISSUES FOR DETERMINATION

- (1) *Whether the charge was proved beyond reasonable doubt.*
- (2) *Whether the evidence of P.W.2 - an accomplice require corroboration.*

HELD (Unanimously allowing the appeal per judgment of **ADEMOLA JCA**)

Unreliable witness

1. There can be no doubt that Mr. Ogbole is right on the question that 1 P.W. should have been regarded as unreliable witness. His testimony in court is different from proof of evidence available in court on the issue whether appellant to his hearing made a demand for gratification either for himself or for somebody else in this case a judge. The cross-examination of the witness and his admission should have made the learned trial judge to come to a conclusion that he is not a reliable witness, as we now think he is. (p. 1382 F)

Witnesses - Variation in evidence

2. The learned counsel is also right in his submission that 1 p.w. evidence is at variance with 2 p.w. as to the place and time of the alleged demand. This contradiction could not be easily glossed over as was done by the learned trial judge. (p. 1382 H)

Public Officer accepting gratification

3. There was nothing wrong in 2 p.w. telling the police where the appellant put the money before they conducted a search. Instead of giving one the impression that they (Policemen) accidentally or intuitively knew

that the N200 was in one of the pockets of the jacket (Exh.3) on the wall in appellant's house. Modern crime detection is based on information and not on any intuition or any magical powers a policeman may possess. We are of the view that given the circumstances present in the case some of which the extracts from the evidence detailed above have revealed, the learned trial judge should have come to the conclusion that the case against the appellant has not been proved beyond reasonable doubt. (p. 1385 F)

Corroboration - Charge of receiving N200 bribe

4. The learned Director Public Prosecution's view is that the issue of corroboration does not arise at all. The question is, is the 2 p.w. an accomplice? We unresistably answer this in the affirmative. In our view 2 p.w is not a victim of extortion by the appellant but a giver of a bribe whose evidence must require corroboration; ABU OSIDOLA V. COMMISSIONER OF POLICE 1958 N.R.L.R. P.42 at P.47. It is clear from the judgment of the court below that the issue did not cross the mind of the learned trial judge. We agree with counsel for the appellant that the evidence of 1 p.w. cannot be regarded as affording corroboration of a demand as that witness is an unreliable and untruthful witness; ODOFIN BELLO V. THE STATE 1967 N.M.L.R. P.1 at P.6. His evidence could not be corroboration to the receipt of the bribe by the appellant from the proved facts of the case. Equally one cannot use the evidence of 3. p.w. and 4 p.w as affording such corroboration as we cannot say that the fact of receipt of the N200 bribe by the appellant has been established beyond all shadow of doubt. (p. 1386 B)

REPRESENTATION

Mr. M. Ogbole for the appellant

Mr. A. Idoko, D.P.P. Benue State for the respondent

CASES REFERRED TO

Majekodumi v. The Queen 14 W.A.C.A. p. 68

Ukut v. The State 1965 1 ALL N.L.R. p. 306 at 307

Ozude v. Inspector General of Police 1 ALL N.L.R. p. 102

Ajenikeke v. The State 1971 N.W.L.R. p. 399

Osidola v. Commissioner of Police 1958 N.R.L.R. p. 42 at p. 47

B

JUDGMENT BY ADEMOLA JCA

The appellant, an Assistant Prince Control inspector in the service of the Federal Military Government, was tried in the Makurdi High Court for an offence of directly accepting from Emmanuel Igbago, a hotelier, at Otukpo gratification of two hundred naira other than legal remuneration as a motive for showing favour in the exercise of his official function thereby committed an offence under section 115(b) of the penal Code.

The High Court sitting in Makurdi found him guilty of the offence having believed the evidence of the witnesses as to the demand the appellant made for the money and the finding of the marked two hundred Naira notes belonging to the principal witness Mr. Igbagbo by the police in a jacket belonging to the appellant in his own room. He was convicted but given a sentence of a fine in lieu of terms of imprisonment. He has through his counsel appealed to this court. Mr. Ogbole, counsel for the appellant argued five grounds of appeal in his favour.

The general ground argued, as the first ground, was to the effect that the learned trial judge did not say nor could he have said he was satisfied beyond reasonable doubt on the evidence as to the guilt of the appellant. He dubbed the principal witnesses of the prosecution i.e. 1 p.w. and 2 p.w. as liars whose evidence could not have been believed. On the 1st p.w. he pointed out that on the issue of appellant making a demand, the evidence of the witness was at variance with his statement to the police. The witness admitted this in so far as he did not tell the police in his statement that appellant made the demand to which he was now testifying in court. Also 1 p.w. evidence contrast sharply with the evidence of 2 p.w. as to the place and time and for whom the demand was made.

He submitted that the learned trial judge did not resolve this contradiction and if he did he would have come to the conclusion that 1 p.w

was an unreliable witness on whose evidence it was not safe to act. On the 2 p.w. he submitted that the learned trial judge did not advert his mind to the fact of his (2 p.w) conviction and fine by the High Court at the instance of the appellant; the fact that 2 p.w has been charged to court at the time of his offence by the appellant. These undeniable facts should B have made the learned trial judge to be cautious in accepting his (2 p.w.) evidence as truthful. Finally on this general ground evidence as Mr. Ogbole submitted that it cannot be said on the evidence that appellant received the sum of N200 from 2 p.w. as found by the learned judge. He C referred us to a part of the record where the learned judge himself during counsels address recorded that it was impossible for the money alleged given Exh. 1 to fit into an envelope Exh. 2 before such money and envelope was put Exh.3, a jacket belonging to the appellant. There is also D the fact of 2 p.w.s' admission that when he came out of the house of appellant he did not tell the police that the appellant put the money he received from him into. Exh. 3. From the premises of the above, the learned counsel for appellant submitted on the authority of ADEBIYI MAJEKODUMI v. THE QUEEN 14 W.A.C.A. P. 68 that the prosecution did not prove the case beyond reasonable doubt. Mr. Ogbole next E grounds were grounds 2 and 4 which he argued together.

They relate to the issue of corroboration and caution in accepting the evidence of witnesses who have their own purpose to serve, or F tainted or aggrieved . He submitted that 2 p.w. is an accomplice whose evidence on the issue of demand expressly found by the learned judge to have been made by the appellant require corroboration. The evidence of 1 p.w. could not afford such corroboration, though the witness is not an G accomplice but one whose evidence cannot be believed because he could not be called a credible witness in the circumstances of this case. The learned trial judge did not advert his mind to this aspect of the case. If he did, the submission is that he could not have found any and corroboration is essential for conviction; Akpan Udo UKUT and others v. THE H STATE 1965 1 ALL N.L.R. P.306 AT 307; Peter Ozude v. Inspector General of Police 1 All N.L.R. P. 102. On the submission that 1 p.w. and 2 p.w. were aggrieved witnesses whose evidence needed to have been

accepted with caution which was not done in this case, Mr. Ogbole, invited our attention to the case Shittu Ajenikeke v. The State 1971 N.M.L.R. P. 399. Mr. Ogbole did not press his other two grounds of appeal 3 and 5 because the points involved have already been covered in his argument on their grounds.

Mr. IDOKO'S support of the conviction of appellant was rather half-hearted. While in one breath he conceded that some issues arising out of the evidence of 1 p.w. and 2.p.w. who were the principal witnesses in the case, had not been well dealt with in the judgment, he however submitted that there was no contradiction in the evidence of 1.p.w. and 2.p.w. on the issue of the demand for the gratification made by the appellant and that there was corroboration of the evidence of demand from the 2.p.w. by the appellant by the evidence of 1.p.w.

On the question of receipt of the gratification by the appellant, he directed our attention to the evidence of 3p.w. and 4p.w. which the learned trial judge accepted.

Finally he submitted that the learned trial judge need not have warned himself in this case as there was no necessity for such warning.

Before dealing with the argument pressed upon us, it is necessary to preface whatever we are going to say by associating ourselves with the condemnation of the action of the police in the beating of the appellant as found by the learned trial judge and his rebuke of their action.

Now to the questions raised by this appeal.

There can be no doubt that Mr. Ogbole is right on the question that 1 p.w. should have been regarded as unreliable witness. His testimony in court is different from proof of evidence available in court on the issue whether appellant to his hearing made a demand for gratification either for himself or for somebody else in this case a judge. The cross-examination of the witness and his admission should have made the learned trial judge to come to a conclusion that he is not a reliable witness, as we now think he is. The learned counsel is also right in his submission that 1 p.w. evidence is at variance with 2 p.w. as to the place and time of the

alleged demand. This contradiction could not be easily glossed over as was done by the learned trial judge.

We come to the issue of acceptance of the N200 by the appellant from the 2 p.w. We have already noted what the learned trial judge said in respect of Exhibits 1,2,3 (the money, the envelope and the jacket) for the sake of clarity, it is pertinent here to quote the very note made by the learned trial judge. It runs thus:- "The N5 notes of N200 (Exh. 1) I notice cannot and would not have entered Exhibit 2 before being deposited in Exh. 3" (underlining ours) The 2 p.w. in his evidence in Chief on this point said:-

"On getting to Otukpo in company of Inspector (ASP) Tail and 4 others I went with Exhibit 1 into accused's house. While the Inspector and his men were outside in the compound I went into the room to meet accused. I handed over Exhibit 1 to accused who then put it in a envelope - like airmail envelope. Envelop tendered. Exhibit 2. No objection. Marked Exhibit 2. On putting Exhibit 1 into Exhibit 2 accused dropped it inside a brown jacket pocket and hung it by the wall from where it was latter hanging. If I see the brown jacket I will know it. Brown velvet jacket identified tendered. No objection. Exhibit 3 Marked Exhibit 3. Immediately after this I was coming out when the C.I.D. men entered accused's room. I did not tell the C.I.D. men anything except to give them signal that accused had received the money." Under cross-examination he further said. "I cannot remember how long the search of accused's house was. I did not hear the police say to accused to bring that money he received to them I did not tell the C.I.D. men that the money was in Exhibit 3. Accused received Exhibit 1 from me." (Underlining is ours). The 3 p.w. evidence on this point which the learned D.P.P. submitted supported 2 p.w. went thus:- "There was a lady standing inside the yard, called Mary and we invited her to come and witness what we were doing inside accused's room. When she came in we started searching for the N200 in her presence. After much I personally dipped my hand in a brownish (velvet) jacket hanging from hanger and therein recovered an air mail envelope containing the sum of N200 in N5 notes with the 'B' marked on each note just as we marked from our

office. If I see the brown velvet jacket I will know it." And under cross-examination he said further "We did not beat accused. It took us quite a long time before I recovered the money (N200) from Exhibit 3. The complaint did not come with us into accused's room nor entered there while we searched. This was perhaps in his own interest. Accused denied putting the money (N200) in Exhibit 3. I am sure that Exhibit 2 was the envelope in which Exhibit was put. The mark 'B' on Exhibit 2 was put on it after accused's arrest but I am not sure who put it. Exhibit 2 was not sealed when I recovered it from Exhibit 3." (Underlining is ours)

Another piece of evidence which was said by the learned Director of Public prosecution to support 2 p.w. testimony was that of 4 p.w. He said thus in examination in chief:- "We met accused at the door when he was just about coming out I informed him that I suspected him of receiving a gratification of N200. Accused denied but allowed us into his house.

In the house he brought out the sum of N525 from a box and asked, if that was the money. I replied that it wasn't. I further asked whether there was any other money he had there. He denied having any more money there. I ordered my men to conduct a search of accused's room and during the search cpl. (Now Sgt..) Halary found the N200 marked by me in an envelope inside the pocket of a brown jacket which was hung on a hanger in accused's room." (Underlining is ours). In cross-examination he said thus:- "Accused consistently said while we were searching his house that he did not know anything about the N200 until we recovered it. The complaint (Emmanuel Igbago) was in courts already having been arrested by accused for violating the price control Decree. I am aware that a similar trumped up charge of accused demanding gratification of N100 also originating from Otukpo and that it was about 4 months before the report. I am aware too that accused had been tried and discharged acquitted on that report." (Underlining is ours)

We also would like to quote from the evidence of 5 p.w. because of the findings made on it by the learned trial judge on some collateral issues in this case. She said in examination in Chief:- "When I went in was asked

if I knew accused and after I had replied in the affirmative the people holding accused told me that he had been given the N200 as gratification and the was what they had been looking for. Accused repeated in my presence that nobody gave him the N200. The N200 notes I saw was in N5 notes denomination. When the people asked accused for the money and he said nobody gave him the money, they said that if they tortured accused he would produce the money. When then one of the men slapped accused and a girl standing nearby cried I ran to report to accused's senior brother's house. I did not meet Accused's senior brother but by the time I returned to accused's room the men showed me the money (N200) they said they recovered from accused's jacket pocket." And under cross-examination said: "All throughout the search I did not enter accused's room as p.w. 4 also did not." (Underlining is ours).

We need not apologize for quoting at length from the evidence of the prosecution witnesses. Our intention following the argument of counsel for the appellant, is to drive home the point about contradictions in the evidence of the prosecution witnesses with which some of the underlining done in the passages would have helped to bring out. It is clear from the passages above that at no time did the 2 p.w. tell any of the policemen who conducted a search in appellant's room where the money he alleged appellant received from him could be found. He was silent about this after he came out of appellants room. This is important. The appellant claimed that he had no knowledge of the N200 being in his jacket Exh.3 and the possibility of 2 p.w. Putting it there after he left him in the room and went to toilet could not be ruled out. **There was nothing wrong in 2 p.w. telling the police where the appellant put the money before they conducted a search. Instead of giving one the impression that they (Policemen) accidentally or intuitively knew that the N200 was in one of the pockets of the jacket (Exh.3) on the wall in appellant's house. Modern crime detection is based on information and not on any intuition or any magical powers a policeman may possess.**

We are of the view that given the circumstances present in the case some of which the extracts from the evidence detailed above have revealed, the learned trial judge should have come to

the conclusion that the case against the appellant has not been proved beyond reasonable doubt.

B It has been submitted by Mr. Ogbole counsel for the appellant that the learned trial judge did not at any time consider the issue of corroboration of the evidence of the 2 p.w. That submission must postulate that the 2 p.w is an accomplice.

The learned Director Public Prosecution's view is that the issue of corroboration does not arise at all. The question is, is the 2 p.w. an accomplice? We unresistingly answer this in the affirmative. In our view 2 p.w is not a victim of extortion by the appellant but a giver of a bribe whose evidence must require corroboration; ABU OSIDOLA V. COMMISSIONER OF POLICE 1958 N.R.L.R. P.42 at P.47 (approved in our unreported judgment in FCA/K/ 36/77 ANUDA D BADEYI V. THE STATE OF 16TH JUNE, 1978. It is clear from the judgment of the court below that the issue did not cross the mind of the learned trial judge. We agree with counsel for the appellant that the evidence of 1 p.w. cannot be regarded as affording corroboration of a demand as that witness is an unreliable and untruthful E witness; ODOFIN BELLO V. THE STATE 1967 N.M.L.R. P.1 at P.6 His evidence could not be corroboration to the receipt of the bribe by the appellant from the proved facts of the case. Equally one cannot use the evidence of 3. p.w. and 4p.w as affording such corroboration as we cannot say that the fact of receipt of the N200 F bribe by the appellant has been established beyond all shadow of doubt.

G We need not consider the submission made to us about 1p.w. and 2p.w. being witnesses who have a purpose of their own to serve or being characterized as aggrieved or tainted witnesses whose evidence need to be accepted with caution not because it lacks merit; but we feel that the fact that 2 p.w. has been classified as an accomplice has over-shadowed the point in that ground of appeal. The net result is that this H appeal succeeds on the grounds urged upon us. The conviction and the sentence of fine imposed are set aside. The appellant is discharged and acquitted and if he has paid the fined imposed such fine should be refunded to him.