THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT GULU

[CORAM: Kakuru, Egonda-Ntende & Obura, JJA]

Criminal Appeal No. 144 of 2014

(Arising from High Court Criminal Session Case No. HCT-02-CO-SC-0089 of 2013 at Gulu)

Between

Okuja Francis==========Appellant

And

Uganda==========Respondent

(On Appeal from the decision of the High Court of Uganda [Alfonse Owiny-Dollo, J.,] sitting at Gulu and delivered on the 19th June 2013)

JUGDEMENT OF THE COURT

Introduction

1. The appellant, and another, were indicted of the offence of aggravated robbery contrary to sections 285 and 286 (2) of the Penal Code Act. The particulars of the offence were that the appellant and another on the 14th day of November 2012 at Kirombe Layibi Division in Gulu District robbed one Onencan Moses of Motorcycle No. UDX 926/P, Bajaj red in colour and at, immediately or immediately after the time of the said robbery used deadly weapon to wit a knife on the said Onencan Moses. The appellants and another were tried and convicted of the said offence on their own plea of guilty. They were sentenced to 15 years imprisonment. The appellant appealed against conviction only.

2. The appellant in his sole ground of appeal contends that the learned trial judge erred in law when he failed to comply with the law on plea taking rendering the appellant's plea of guilty illegal.

3. The respondent opposed the appeal.

Submissions of Counsel

4. Mr Lloyd Ochorobiya appeared for the appellant and Ms Caroline Hope Nabassa, Senior Assistant Director of Public Prosecutions, of the Office of the Director, Public Prosecutions, appeared for the respondent. Mr Ochorobiya submitted that when you look at the record of proceedings in the High Court, it does not indicate what charge was read over and explained to the appellant and in what language this was done. It is not clear if there was interpretation of the proceedings to the appellant in the language he understands. He referred us to the case of Adan v Republic [1973] E A 445 which deals with plea taking. He also referred to Nakafunga v R [1956 / 1957 ULR 151. He submitted that it was not followed by the trial judge and the conviction should be set aside.

5. Ms Nabassa submitted that the plea had been properly taken by the trial court and the appellant with his co accused had admitted the charge. The facts were read out to them and they were accepted as true. The trial judge proceeded to rightly convict them on their own plea of guilty. While it was true that the language which was interpreted to the appellant was not indicated the record clearly indicates that the appellant understood what was going on and he offered a plea of guilty. Ms Nabassa submitted that the conviction and sentence should be maintained.

Analysis

6. We called for the original record of the trial court to ascertain if there had been an interpreter in court at the time proceedings against the appellant unfolded. The record clearly indicates that Ms Anna Alengo was the 'Interpreter / Court Clerk' for the court that morning. It is also clear that the language in which the proceedings were translated or interpreted for the appellant to follow was not indicated. Neither is there a complaint that the appellant did not follow what was being read out to him in open court. On the contrary we note that there was responses made by the appellant which were duly recorded.

7. We shall set out the record of proceedings leading to the conviction of the appellant.

> 'BEFORE: HON. JUSTICE ALFONSE OWINY-DOLLO PROCEEDINGS:-
> 19/06/2013:-
> Mr. Nuwaganya Andrew, Obali for the state.
> Mr. Akena Walter for the accused person.
> Ms Anna Alengo Interpreter / Court Clerk

Court:-
Charge read and explained.

Accused No. 1:- I have understood. It is true.

Accused No.2:- I have understood. It happened.

Court:- Plea of guilty entered for both.

State:- The victim was boda boda rider. On 14th November 2012 at around 10.00p.m. he was riding from Lacor to Gulu Town. He met the two on the way who hired him to take them to Kirombe. They stopped him at the Railway crossing and one of the two hit him on the head, grabbed him by throat, ordered him not to shout and threatened to stap him with a knife they pulled out. They rode the motor cycle away leaving the victim unconscious. They rode the motor cycle away leaving the victim unconscious. They took two I.Ds of this victim.

On 15th November 2012 the accused persons contacted a person in Lira for a marked [Sic- market] for sale of the motor cycle. The Lira contact alerted Police who arranged for pretending purchase. The Accused persons took the motor cycle to the Police planted person, who paid UGX 700,000/= and a sales agreement in Luo; after which the Police arrested the accused persons. The police recovered in the possession the victim's residential ID, a table knife and the motor cycle as well as the UGX 700,000/=. A1 was examined and found to be 28 years, no injury on him, and was mentally normal. A2 declined to be examined. The recovered motor cycle was photographed. A1:- It is true that is what happened. A2:- That is what happened.

Court:- The two are convicted on their own plea of guilt.'

8. It would have been preferable that the trial court had recorded the language that the appellant was both speaking and in which the indictment and facts had been interpreted. Much as this is lacking it is clear from the record that there was an interpreter and the appellant responded to what was put to him in a manner that indicated that he understood what was put to him. Had the present complaint been that the appellant did not understand what was going on or there had been no translation of the proceedings in a language that he understood then that would have had to be specified in the ground of appeal. This was not done and we take it that it is not the complaint before us.

9. The complaint before us is simply that the trial court did not follow to the letter the procedure set out in Adan v R (supra). The procedure set out in Adan v R (supra) on page 447 is:

> 'When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence, and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relavant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt,
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> ..... The statement of facts serves two purposes; it enables the magistrate to satisfy himself that the plea of guilty was really unequivocal and that the accused has no defence and it gives the magistrate the basic material on which to assess sentence. It not infrequently happens that an accused, after hearing the statement of facts, disputes some particular fact or alleges some additional fact, showing that he did not really understand the position when he pleaded guilty: it is for this reason that it is essential for the statement of facts to precede the conviction.'

10. It would appear to us that much as the language that the interpreter was to interpret and the language in which the proceedings were interpreted to the appellants were not recorded, the proceedings followed as nearly as possible the direction provided in Adan v R (supra). The charge was read and explained to the appellant and the other co-accused at the time. There is no transcript of the explanation but the response of the appellant is recorded. He stated, 'I have understood. It happened.' It is then that the plea of guilty was noted on the file. Then the state read out the facts of the case. He accepted those facts as correct. He was then convicted on his own plea.

11. It is desirable that omissions in this case should not be the order of the day. Trial courts should record as much as possible all the necessary detail that will fully show what transpired in that court. If you have an interpreter the language that he is interpreting the proceedings into should be stated

and if an accused does not understand the language of the court the language in which he speaks to the court should also be stated. Nevertheless the omission to do so, without more cannot render the proceedings illegal or a nullity as argued by the appellant before us. We are satisfied that the essential direction in Adan v R was followed in this case.

12. Section 139 of the Trial on Indictment Act is relevant to this matter as it provides that unless an error occasioned a miscarriage of justice no such error or mistake should invalidate a conviction of the trial court. It states,

> ' 139. Reversability or alteration of finding, sentence or order by reason of error, etc.
>
> (1) Subject to the provisions of any written law, no finding, sentence or order passed by the High Court shall be reversed or altered on appeal on account of any error, omission, irregularity or misdirection in the summons, warrant, indictment, order, judgment or other proceedings before or during the trial unless the error, omission, irregularity or misdirection has, in fact, occasioned a failure of justice.
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> (2) In determining whether any error, omission, irregularity or misdirection has occasioned a failure of justice, the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.'

13. This same point is also raised in section 34 (1) of the Criminal Procedure Act which states in part that

> '..... the Court shall, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.'

14. We are satisfied in the circumstances of this case that the appellant suffered no miscarriage of justice, in spite of the errors noted above by the trial court. We therefore reject this sole ground.

15. We would not ordinarily interfere with the sentence given that no appeal was made in relation to the sentence. However, we note that the sentence in this case is illegal as the learned trial judge did not comply with Article 23 (8) of the Constitution and deduct the period the appellant had spent on remand from the sentence to be imposed. See Rwabugande Moses v

Uganda S C Criminal Appeal No. 25 of 2014 (unreported). This is what the learned trial judge stated at sentencing,

> 'This is a case of armed robbery in which violence was not only threatened but actually used to the point of leaving the victim unconscious. Court is told that motor cycle theft or robbery is rampant and this has got to thwarted.... ..... Had it not been for the fact that the convicts pleaded guilty, I could have put them in prison for not less than 30 years so that they know that one has to earn a decent living. However, because of their plea of guilt, I sentence each of them to serve 15 years in prison, and hope that this will afford them to reflect on the need to engage in only lawful enterprises to earn a living. This I believe will sound a warning all out there who believe in thieving to abandon the enterprise as not worth indulging in it.'

16. We cannot ignore this illegality in spite of the absence of an appeal on this point. We shall therefore using our powers under section 34 (2) (b) of the Criminal Procedure Act and section 11 of the Judicature Act sentence the appellant afresh.

17. The appellant is a young man who was only 25 years at the time this offence was committed. He is a first offender with no previous record. The subject of the robbery was recovered and presumably restored to its owner. He pleaded guilty saving the court's time and resources. However, he committed a very serious offence, causing injuries to the victim. We are satisfied that in the circumstances of this case a sentence of 10 years imprisonment would fit the crime and the appellant. As the appellant had spent 7 months on remand prior to his conviction we sentence him to serve a period of 9 years and 5 months imprisonment from the 20th June 2013, the date of conviction.

Signed, dated and delivered at Gulu this 7th day of November 2017

Kenneth Kakuru
Justice of Appeal

Fredrick Egonda-Ntende
Justice of Appeal

Hellen Obura
Justice of Appeal