

that conspiracy was not proved by the prosecution beyond reasonable doubt

- iii. That the trial court erred in law and fact and failed to properly evaluate the evidence on record when she found that there was no theft.
 - iv. That the trial court erred in law and fact and failed to properly evaluate the evidence on record when she acquitted the accused persons when the prosecution had proved its case beyond reasonable doubt.
 - v. That the trial court erred in law and fact when it was biased in its evaluation of evidence when it held that escorting a one Nitin to the airport and being in constant communication with accused person is not evidence of conspiracy.
 - vi. The trial Court erred in law and fact when it failed to properly evaluate the evidence on record and this arrived at a wrong decision.
2. The Appellant prayed that this appeal is allowed, the order of the trial court of acquitting the Respondent be quashed and substituted by an order convicting and sentencing the accused accordingly.

Background

3. The background of this case is that the Respondents were charged with the offence of conspiracy to commit a felony contrary to Section 390 of the Penal Code Act.

4. Prosecution led evidence of 04 witnesses to prove its case.
5. PW1 Paraj Gajera, a financial controller with the complainant company testified that a one Nitin was an accountant with the company and picked money from Modern distributors, a sister company to the complainant, however he disappeared with it and went back to India.
6. That regarding the Respondents, he was just informed by the Company driver that the Respondents escorted the said Nitin to the airport however, they were not with him when he picked the money.
7. PW2, Wandera Shalon. A human Resource Manager with Lugazi sugar testified that they were workmates with the Respondents and that she had also just been informed that they had conspired with Nitin to steal the money.
8. Nankya Justine, PW3 testified that she was the former legal officer of the Complainant stated that she was called by her boss and informed that Nitin had run away with Company money amounting to Ug Shs 223,000,000 supposed to be payment for molasses.
9. That PW3 suspected that the 1st Respondent was aware of what was happening because of the various call correspondences between Nitin and the 1st Respondent.
10. PW4, Mukova Muzafaru, the driver of the complainant on the other hand testified that he picked Nitin and the 1st Respondent from their place as they were staying together and drove to

Mukono and picked the 2nd Respondent and then headed to the airport and dropped off Nitin.

11. That he later took them to Kabalagala however, they were speaking their native kanguage wgich he did not undestant.
12. That between 3:30 am and 4:00am, they left Kabalagala and he dropped each of them at their respective place of residence and even parked the car at the home of the 1st Respondent.
13. PW5 D/AIP Aluma Edmumd testified that he took over the case after complaints had been made against his junior No. 59528 D/C Ewatu who had investigated the case and did not find any incriminating evidence against the Respondents, which led to him being declared a hostile witness.
14. PW5 also did not prove any findings of conspiracy as against the Respondents.
15. In their defence, the Respondents admitted to having escorted the said Nitin to the airport; however they did so as workmates.
16. That the said travel was well known by the Company as it is the company that bought the air ticket and also allowed him use the company car for transport.
17. That the 2nd Respondent even reported for work the day after escorting Nitin to the airport, until the company called him on allegations of theft and conspiracy with the said Nitin, which led to the subsequent confiscation of his passport by the complainant.

Legal representation

18. The Appellant was not represented during the hearing of this appeal.
19. The Respondents were represented by Ms. Lydia Ntono appearing together with Ms. Kiconco Charity.

Submissions

20. None of the parties filed written submissions.

Decision of court

Duty of first appellate court

21. This being a first appeal, this court is under a duty to reappraise the evidence, subject it to an exhaustive scrutiny and draw its own inferences of fact, to facilitate its coming to its own independent conclusion, as to whether or not, the decision of the trial court can be sustained (*see Bogere Moses v. Uganda S. C. Criminal Appeal No.1 of 1997 and Kifamunte Henry v. Uganda, S. C. Criminal Appeal No.10 of 1997*, where it was held that: "the first appellate Court has a duty to review the evidence and reconsider the materials before the trial judge. The appellate Court must then make up its own mind, not disregarding the judgment appealed against, but carefully weighing and considering it").
22. An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination, (*see Pandya v. Republic [1957] EA. 336*) and the

appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion (**see *Shantilal M. Ruwala v. R.* [1957] EA. 570**).

23. It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, (**see *Peters v. Sunday Post* [1958] E.A 424**).
24. The prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift to the accused persons and the accused are only convicted on the strength of the prosecution case and not because of weaknesses in their defence, (**See *Ssekitoleko v. Uganda* [1967] EA 531**).
25. By their plea of not guilty, the respondents put in issue each and every essential ingredient of the offences with which they were charged and the prosecution had the onus to prove all the ingredients beyond reasonable doubt.
26. Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that

the accused are innocent, (**see *Miller v. Minister of Pensions [1947] 2 ALL ER 372***).

27. The offence of conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. The offence is complete the moment such an agreement is made. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. It is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. **See: *Director of Public Prosecutions V. Nock, [1978] 2 All E.R. 654***).
28. Not only is the prosecution required to prove the intention but also that there was an agreement to carry out the object of the intention, which is an offence. The offence of conspiracy has three elements: (1) an agreement, (2) which must be between two or more persons by whom the agreement is effected and (3) a criminal objective which may be either the ultimate aim of the agreement or may constitute the means or one of the means by which the aim is to be accomplished. **See: *Angodua v Uganda (Criminal Appeal No. 0013 OF 2016) High Court at Arua***.
29. In the instant case, the evidence led by prosecution revealed that there was theft of money, which theft was perpetrated by a one Nitin, who was an accountant with GM sugar.

30. What became very evident is that the Respondents were being castigated for escorting Nitin to the airport and they termed this as conspiracy to steal the said money.
31. Applying this to the ingredients of the offence, the prosecution failed to prove that there was an intention and / or an agreement by the Respondents to commit the said offence together with the said Nitin.
32. The Respondents were fortified by their defence and also evidence led by some prosecution witnesses, that Nitin's travel was well known by his employers/ complainant as they purchased the air ticket and also used the Company vehicle and driver to head to the airport.
33. Further, the fact that the Respondents even reported to their work stations the next day and continued carrying out their work until the complainant realized that Nitin had stolen money, very many days later, cannot be said to be conduct of a conspirator.
34. The Learned Trial Magistrate found that the prosecution had failed to discharge its legal burden of proving that the Respondents conspired together with Nitin to commit a felony of theft on the basis that the act of escorting Nitin to the airport in itself cannot constitute conspiracy and that more cogent evidence was required to prove that there was an agreement between the Respondents either between themselves or with the said Nitin to commit the said theft.
35. This Court agrees with the Learned Trial Magistrate and finds no merit in this appeal and the same accordingly fails.

Conclusion

36. In the final result, this appeal is dismissed.

Dated this 18th day of April 2024.

A handwritten signature in blue ink, consisting of a stylized 'D' and 'M' with a long horizontal stroke extending to the right.

David Matovu
JUDGE