

REPUBLIC OF LIBERIA, Appellant, v. **JOHNSON CHAKPADEH**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE EIGHT JUDICIAL
CIRCUIT, NIMBA COUNTY

Heard: December 5, 1988. Decided: December 29, 1988.

1. Acquittal of the defendant at the close of evidence on either side lie within the sound discretion of the trial judge.
2. In determining whether a defendant should be acquitted after close of evidence, a trial judge must take into consideration the crime with which the defendant is charged and the evidence adduced at the trial by the prosecution to sustain the charges.
3. Where a judge finds that the initial evidence presented against the defendant is insufficient to convict on the charges, on the court's own motion or on motion by defendant, the trial judge may proceed to acquit without going through a jury trial of the facts.
4. Prima facie evidence is evidence sufficient to establish the fact unless rebutted.
5. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether defendant's guilt is satisfactorily shown, said defendant is entitled to an acquittal.
6. An indictment must include a statement of the facts and circumstances of the crime for the information of the accused.
7. The material facts essential to constitute the offense charged must be proved beyond a rational doubt, or the accused is entitled to a discharge.
8. Mere allegations of value do not constitute sufficient proof for a conviction of larceny.
9. Larceny is a graded offense in Liberia, thus the value of the property taken must be laid in the indictment and proven as a constituent element of the offense.

Appellee was indicted and arraigned on the charge of grand larceny, to which he pleaded not guilty. Following the presentation of the prosecution's case, appellant filed a motion for a judgment of acquittal, charging that the state had failed to establish a prima facie case against him for the crime charged. The prosecution

resisted by arguing that the time to raise the issue of the correctness of the charge was at the arraignment. The trial judge granted the motion of acquittal, holding that the crime had not been proven beyond a reasonable doubt, since the prosecution had failed to establish the value of the articles allegedly stolen. The prosecution excepted and appealed to the Supreme Court. In reviewing the appeal, the Supreme Court found that the state had failed to prove that the defendant took the articles. It further held that the value of the articles for which the defendant was charged with stealing had not been stated in the indictment or proven at trial. The Court concluded that because the state failed to prove the value of the stolen articles, he cannot be found guilty of grand larceny.

The Solicitor General of Liberia, McDonald J. Krakue, for the appellant. Joseph A. Dennis for the appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

The appellee, Johnson Chakpadeh, was indicted by the grand jury of Nimba County, on the charge of grand larceny during the May, A. D. 1982 Term of the Eighth Judicial Circuit Court. The said indictment charged:

"The Grand Jurors, good and lawful citizens of Nimba County, Republic of Liberia, duly selected, sworn and empaneled to inquire for and on behalf of the Republic of Liberia, do upon their oaths present as follows, to wit.

That defendant Johnson Chakpadeh, of Lamco, Yekepa, Nimba County and Republic of Liberia and within the jurisdiction of this Honourable Court in violation of the Liberian Penal Code of Laws of 1956, section 297, relevant portion which reads thus:

Any person who (a) with no color of right steals, takes and carries away the personal goods of another with intent in so doing feloniously to convert said goods to the taker's own use without and against the will and consent of the owner; or (b) with intent to convert such property to his own use, by any trick or artifice induces another to part with the possession of his personal property; or (c) by force suddenly steals, takes and carries away from the person of another and without his knowledge, any personal goods the property of the person forcibly deprived thereof, with intent in so doing to convert said goods to the taker's own use. Grand larceny is punishable by imprisonment not exceeding seven years. That in the months of August, A. D. 1981 and February, A. D. 1982, the exact date being unknown to the grand jurors, Johnson Chakpadeh, defendant, of Lamco, Yekepa, Nimba County and Republic

aforesaid and within the jurisdiction of this Honourable Court, did there and then, unlawfully, wilfully and feloniously without any legal justification whatsoever, as an employee of private prosecutor in his barber shop located at Recreation Hall, Lamco, Yekepa, Nimba County, takes and carries away:

- a) One gold chain valued @ \$270.00
 - b) One clipper valued @\$ 50.00
 - c) One pair of scissors valued @ \$ 15.00
- Total \$335.00

owned by private prosecutor (Michael Nimley) against his will and consent, to deprive the lawful owner thereof to his own use and benefit, then and thereby the crime of grand larceny the defendant did do and commit, contrary to the form, force and effect of the statute laws of Liberia, in such cases made and provided against the peace and dignity of this Republic.

And so the grand jurors aforesaid, upon their oaths do present and say that Johnson Chakpadeh, defendant aforesaid, at the time and place in the manner and form aforesaid, the crime of grand larceny the defendant did do and commit contrary to the form, force and effect of the statute laws of Liberia, in such cases made and provided against the peace and dignity of this Republic.

Defendant/appellee was arraigned and he pleaded not guilty. Thereupon a jury was selected, sworn and empaneled to try the issues joined between the defendant and the state. The prosecution produced four witnesses at the trial, and one of them was Michael Nimley, the private prosecutor. Witness Nimley testified that appellee was his employee at his barber shop, and the appellee, while so employed, had stolen from him a pair of scissors, a pair of clippers and one gold chain, all of which together are valued at \$335.00.

The second witness, George Togbaye, testified that all he knew was that he saw appellee with a gold chain, which appellee said was given to him by his girl friend. The prosecution's third witness was one Parker, who also testified that the private prosecutor only met him and said that appellee had stolen his tools and a gold chain, and the appellee whereupon promised to pay for them on the assumption that one of his friends might have entered the shop and stolen the items. However, appellee later refused to pay and could not be found for some time.

The fourth and final witness for the prosecution was one Stephanie Dahn, who testified that appellee had brought to her a gold chain which he wanted to sell to her;

that she had offered to pay \$150.00, make an advance of \$20.00, and pay the rest later. She testified that the appellee had told her that his boss man, Michael Nimley, had given him the chain, and when she met him the next day he said that he had sold it. Thereupon she contacted Mr. Nimley who denied ever giving the appellee a gold chain.

At this stage the prosecution rested evidence and gave notice of producing rebuttal witnesses later. Whereupon appellee's counsel filed a motion for a judgment of acquittal, contending amongst other things that the prosecution had failed to make out a prima facie case of grand larceny against him. Further, the defense counsel maintained that the allegations in the indictment have not been proved beyond a reasonable doubt and that in any case, defendant was an employee of the private prosecutor in charge of his tools and entrusted with a key to the barber shop at the time the theft was allegedly committed. Therefore, while he might have committed embezzlement, he could not be charged for grand larceny since he was not trespassing when he allegedly took the property, but was an employee with right of access to the said barber shop.

In resisting the motion, the prosecution maintained that it had made out a prima facie case of grand larceny; and that in any case, the defendant should have raised the issue concerning the proper charge at the time of his arraignment and not during the trial. The prosecution further maintained that at the time of his preliminary investigation, defendant confessed to the theft and that the prosecution witnesses had corroborated the testimony of each other.

In sustaining the motion, the trial judge held that what the indictment charged had not been proven beyond a reasonable doubt during the entire trial of the case by the prosecution, especially the value of the articles allegedly stolen, in that apart from the testimony of the private prosecutor, there was no corroboration made by the testimony of any of the witnesses who testified for the state; that granted the value of the scissors and clippers were attempted to be established by the state, in the opinion of the court, this attempt was not conclusive. The judge concluded that the doubts in the mind of the court should operate in favor of the defendant, and therefore, he granted the motion of acquittal and discharged the defendant from further answering to the charge of grand larceny.

Whereupon, the prosecution excepted and announced an appeal to this Court.

The prosecution filed a three-count bill of exceptions contending that the trial judge

had sua sponte assumed the role of the trial jury when he ruled granting the motion for acquittal and denying prosecution's resistance to said motion; that the testimonies of the prosecution witnesses were not rebutted by the defense; and finally that the judge had refused to forward the factual issues to the jury who are judges of the facts and thereby invaded the province of the jury.

In its brief before us, the appellee strongly maintained that the prosecution never made out a prima facie case against him, since to convict an accused, the guilt should be proved beyond a reasonable doubt and failure to prove same should operate in favor of the defendant; that there is variance in the testimonies of the various witnesses, as they do not corroborate with each other, and they could not establish the value of the stolen goods to give the defense notice of the value or allow the court to ascertain whether the crime was grand or petty larceny; and finally, that the judge did not usurp the functions of the jury since the court has power to grant a motion for acquittal where the prosecution fails to establish a prima facie case against a criminal defendant.

From the foregoing facts and circumstances, we are required to resolve the following issues:

1. At what stage of a criminal trial might the defense move for a judgment of acquittal?
2. What is a prima facie case and whether or not the prosecution had established a prima facie case in this matter.

Our Criminal Procedure Law will be the best answer to the first issue. At what stage of a criminal prosecution might the defense move for acquittal. "The court on motion for a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses..." Criminal Procedure Law, Rev. Code 2:20.10.

The foregoing leaves us in doubt at which stage of the trial a defendant should move for a judgment of acquittal, and consequently we move on to determine whether or not the prosecution had produced evidence sufficient to sustain the charge of grand larceny brought against the appellee or to determine whether or not a prima facie case was established by the prosecution to warrant appellee answering to the charge.

Acquittal of a defendant at the close of evidence on either side is in the sound

discretion of the trial judge who has to take into consideration the charge brought against appellee and the evidence adduced at the trial to sustain the charge against him. If in his discretion he finds that the initial evidence presented to the court is insufficient to convict the defendant on the charge, then on his own motion, or on the motion of the appellee him-self, the trial judge may proceed to acquit him without further bothering to go through a jury trial of the facts.

Prima facie evidence is defined by this Court as "evidence sufficient to establish the facts unless rebutted." *Paye v. Republic*, 10 LLR 55 (1948). The Criminal Procedure Law also provides that a "defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal." Criminal Procedure Law, Rev. Code 2: 2.1.

The indictment in this case charged appellee with grand larceny, and it alleged that he had "unlawfully, wilfully and feloniously without any legal justification whatsoever, as an employee of private prosecutor in his barber shop located at Recreation Hall, Lamco, Yekepa Nimba County, taken and carried away one gold chain valued at \$270.00, one clipper valued at \$50.00, and one pair of scissors valued at \$15.00, with all amounting to \$335.00 owned by the private prosecutor against his will and consent and to deprive the latter of its lawful use and benefit."

It is based on these allegations that appellee was indicted for grand larceny. But when the trial began, it was soon found out that, in fact, appellee was an employee of the appellant and was so employed at the time of the alleged theft. Appellee had earlier found out about the disappearance of the articles allegedly stolen and, when confronted, he agreed to bear responsibility for the barbing tools as one of his friends might have borrowed or stolen them. He therefore promised to pay for the said tools and the private prosecutor agreed, and it was only after his failure to meet up with his obligations that the matter was considered as a theft, amounting to grand larceny under our law. However, appellee denied any knowledge of the gold.

The first prosecution's witness was the private prosecutor himself, who testified that defendant was earlier his employee and he had stolen said goods of the value charged in the indictment. The second prosecution's witness only said that he saw the defendant with a gold chain which defendant said was given to him by his girl friend, and that was all he knew. The third witness said it was the private prosecutor who told him that defendant had stolen his tools along with his gold chain; and that the defendant denied stealing the items, but that defendant had, however, assumed responsibility to pay for them since one of his friends might have stolen them from

the barber shop. The fourth and final witness for the prosecution was a lady who said that defendant had tried to sell a gold chain to her but they never agreed on the price and so he left, only to hear that he had in fact sold it to another person.

It was at the conclusion of all these testimonies that the defendant, now appellee, moved the court to grant him an acquittal because, he contended that the prosecution had failed to produce such evidence that would convince the court that he had in fact committed grand larceny and therefore warrant trial of the facts by a jury. He maintained that the prosecution's witnesses, except the private prosecutor himself, had given no evidence of the value of the goods allegedly stolen, and that in any case, while he might be charged for embezzlement, he did not obviously commit grand larceny. The judge agreed with the defendant and granted the motion of acquittal discharging defendant from further answering the charge of grand larceny, giving as reasons, among other things, that the evidence was insufficient to sustain the charge of grand larceny; and also, that it could not establish the value of the goods, and that the witnesses' testimonies did not corroborate with that of the private prosecutor.

This Court has held that "an indictment must include a statement of the facts and circumstances of the commission of the offence charged for the information of the accused; [and that] the material facts essential to constitute the crime charged must be proved beyond a rational doubt, or the accused will be entitled to a discharge." *Attoh v Republic of Liberia*, 9 LLR 3 (1945). The "mere allegations of value do not constitute sufficient proof for a conviction of larceny, ... [and] where larceny is divided into grades, the value of the property taken must be alleged and proven as a constituent element of the defense." *Cummings v. Republic of Liberia*, 4 LLR 16 (1934).

We find no evidence in the records of proof of the value of the goods allegedly stolen from the private prosecutor or that they were in fact stolen at all. We find that defendant was employed by the private prosecutor and had custody of the goods allegedly stolen, since he had a key to the place. The defendant did not confess to committing the offense, except while in police custody, he allegedly confessed to stealing the articles. The witnesses failed to corroborate each other.

From all of these facts, reasonable persons are bound to conclude that, in fact, the judge was right in acquitting the accused without the decision of the jury. The prosecution failed to establish that defendant had taken the goods, if he took them at all, with a criminal intent to deprive the owner of their benefit. Rather one could see in the evidence that, in fact, the private prosecutor had knowledge of the taking and even condoned it when he allowed the suspect to keep the key to the barber shop

where he worked.

Hence, we are obliged to hold that the prosecution had indeed failed to make a prima facie case, or give evidence sufficient to establish the guilt of the defendant on the charge of grand larceny. While the appellee could have been guilty for committing another offense, he had not committed grand larceny under our law, by the substance of evidence presented to the court. The trial judge was therefore justified in granting the defendant's motion for an acquittal without the aid of the jury.

The judgment of the trial court is therefore affirmed and the appellee is hereby discharged from further answering to the charge of grand larceny. And it is hereby so ordered.

Judgment affirmed