

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

APPEAL FROM THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT,
CRIMINAL ASSIZES, MONTSERRADO COUNTY.

Heard: May 10, 1983. Decided: July 7, 1983.

1. The uncorroborated testimony of a person accused of a crime is insufficient to rebut proof of guilt.
2. Points raised in the bill of exceptions and not argued in the briefs are considered waived.
3. The appellate court will not consider points of law not raised in the lower court and contained in the briefs.

The appellant was charged with theft of property for selling a piece of land which did not belong to him. The charge stated that appellant had sold the land under false pretense. The trial jury brought a verdict of guilty against him and the appellant was sentenced to two years imprisonment and required to make restitution of the amount involved.

On appeal to the Supreme Court, the Court found that appellant had indeed sold the land in question, that he had received the amount alleged against him, and that he was not the owner of the land. The Court also found that even though appellant claimed to have sold the land proffered to a power of attorney, he did not produce any evidence to corroborate the claim that he had the authority to sell the land. Accordingly, the Supreme Court affirmed the judgment of the trial court.

James Doe Gibson appeared for the appellant. A. W. Octavius Obey, Acting Solicitor General, and S. Momolu Kiawu, both of the Ministry of Justice, appeared for the appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

The appellant in this case was indicted and tried under the 1971 Penal Law of Liberia which, under the PRC Government, was repealed by Decree No. 62 and quite recently reactivated by Decree No. 72. Offenses under the 1956 Penal Law, such as embezzlement, grand larceny, petty larceny, obtaining money under false pretense, and other related offenses, are all now grouped and referred to as "Theft of Property" under the 1971 Penal Law.

During the 1979 August Term of the First Judicial Circuit Court, Criminal Assizes "A", Montserrado County, Charlie Johnson, the appellant herein, was indicted by the grand jury for the crime of theft of property. The indictment substantially alleged that the said Charlie Johnson wrongfully, fraudulently, feloniously and intentionally obtained \$600.00 from one Maryle Reeves-Johnson, the private prosecutrix, under the pretext that he owned a certain parcel of land in Congo Town, Monrovia, for sale when indeed and in truth the appellant

owned no such land for sale; that after receiving the said amount from the private prosecutrix, appellant neither gave her the land nor refunded her money.

During the November and December 1979 Terms of the now dissolved First Judicial Circuit Court, Criminal Assizes "C", Montserrado County, the case was called for a trial which ended in a verdict of guilty returned against the appellant. The said verdict was confirmed and affirmed by judgment of the trial court, adjudging the appellant guilty of the crime of theft of property and sentencing him to two years imprisonment with restitution of the \$600.00 to the private prosecutrix. To this final judgment, the appellant excepted and brought this case before this Court for final review by a four-count bill of exceptions.

In counts one and four of the bill of exceptions, the appellant contended before us that his motion for new trial should have been granted for reason that the verdict of the empanelled jury is without legal foundation, in that the same is not supported by the evidence adduced at the trial; hence, the judgment should be reversed. In count two of the bill of exceptions, appellant argued that the trial judge erred when he overruled appellant's objection to a leading question of the prosecution on sheet two of the minutes of the 20th day's sitting of court, Tuesday, November 27, 1979. And in count three of the bill of exceptions, appellant contended that the trial judge committed a patently reversible error when he denied admissibility into evidence of the species of evidence offered by the appellant, which were identified and marked by court "D/1" and "D/2", respectively.

We would like to mention in passing that in count one of appellant's brief, he raised for the first time the question of jurisdiction of the Supreme Court to hear and decide the case on the ground that the First Judicial Circuit Court, Criminal Assizes "C", Montserrado County, from which this case emanated has been dissolved by the PRC Government and was not reconstituted and, therefore, should the judgment be confirmed there would be no court to send this Court's mandate for enforcement of the judgment. However, counsel for appellant while arguing immediately withdrew this contention; hence, we need not comment on it any further.

The next point argued in the brief by counsel for appellant is that, the evidence of the prosecution is contradictory and therefore raises reasonable doubt which must operate in favour of the appellant. Regrettably, however, this issue was not raised in either the motion for new trial or the bill of exceptions. Appellant also argued that the verdict of the jury is not supported by the evidence.

Because of the fact that the issues raised in the bill of exceptions are not argued in the brief, except the contention that the verdict is not supported by the evidence, we must assume that appellant waived all such other issues raised in the bill of exceptions, and, therefore, we must confine ourselves only to the question whether or not the verdict is supported by the evidence. Under the caption of scope of review, the Civil Procedure Law, Rev. Code 1:51.15,

provides that the appellate court shall not consider points of law not raised in the trial court and argued in the briefs. Conversely, points raised in the bill of exceptions and not argued in the briefs are considered waived.

Turning to the evidence, we observed that the private prosecutrix testified in substance that she paid to the appellant, Charlie Johnson, the amount of \$600.00 in two equal installments for the purchase of land; that the land was shown to her by the appellant in Congo Town and it was mutually agreed that on the 3rd of October of that year the surveyors of both the private prosecutrix and the appellant would meet on the land to survey the one lot paid for; that to her surprise and without the two surveyors meeting on the parcel of land to conduct the survey, appellant presented to the private prosecutrix a deed for one lot made out by him for her; and that after her surveyor went on the land which the appellant claimed to be his, and out of which he sold one lot to the private prosecutrix the said surveyor went to the Ministry of Lands, Mines and Energy, and upon inspection of the map thereat he discovered that in fact the said parcel of land was owned by the late Speaker Richard A. Henries and not Charlie Johnson. The second witness who took the stand and testified was Surveyor Lawrence Gbuie, who confirmed the testimony of the private prosecutrix.

The appellant himself testified as a witness in his own behalf. He testified substantially that he was acquainted with the private prosecutrix; that he was reared by the , late F. E. R. Johnson for twenty-five years and that the said F. E. R. Johnson died on his lap; that it was Senator Liberty who got to know about the land and sent to inform his daughter, the private prosecutrix, who then expressed her desire to buy one lot. Appellant also testified that he charged the amount of \$1,000.00 for one lot but that Senator Liberty gave him \$600.00 in two equal installments, for which he issued a receipt at each payment; and that his surveyor, Grisgby, surveyed the one lot and prepared a deed for the private prosecutrix. Appellant testified further, however, that the private prosecutrix informed him that her surveyor was at the Ministry of Lands, Mines and Energy by the name of Reeves and that she would prefer him to do the survey, but that he disapproved of Reeves surveying the lot because his surveyor had already surveyed the lot and made out a deed. Appellant further testified that subsequently, the private prosecutrix returned and told him that she no longer wanted the land. At that juncture, appellant said, he asked Senator Liberty for the balance of his money but Senator Liberty told him to go and that he would contact his daughter, the private prosecutrix, later. Appellant further testified that while waiting, the next thing he saw was three policemen who came from the magisterial court at five o'clock in the morning to arrest him, and they took him to the police station where he remained until he could secure a bond for his temporary release. Appellant also testified that he was selling the land by virtue of a power of attorney given to him by his foster sister, Geneva Johnson-Duff, daughter of the late F. E. R. Johnson, whose signature the deed issued to the private prosecutrix carried as grantor.

From the testimony of the appellant, it is quite clear that; he did sell the land in question to the private prosecutrix through her father, the late Senator Liberty; that he received the amount of \$600.00 therefor and that he was not the owner of the land but elected to sell same to the private prosecutrix based upon a so-called power of attorney given to him by his foster sister, Geneva Johnson-Duff. The testimony of the accused was never corroborated by any other witness, especially Geneva Johnson-Duff, who is alleged to have issued the power of attorney to the appellant and signed the deed he presented to the private prosecutrix. Geneva Johnson-Duff was not shown to be incapacitated to be cited so as to corroborate the testimony of the appellant in respect of the alleged power of attorney and the signature on the deed. It was also not denied by the appellant at the trial and substantiated by any other competent evidence that the land sold by him to the private prosecutrix was for the late Speaker Henries, nor was any attempt made by appellant to refund the \$600.00 he received from the private prosecutrix up to and including the time of his arrest and trial.

In the case *Johns v. Republic*, 13 LLR 143 (1958), this Court held that the uncorroborated testimony of a person accused of a crime is insufficient to rebut proof of guilt. The Penal Law, Rev. Code 26:15.51(b), under which appellant was indicted, provides that:

"A person is guilty of theft if he knowingly obtains the property of another by deception or by threat with the purpose of depriving the owner thereof, or purposely deprives another of his property by deception or by threat".

In view of the foregoing, and the law cited supra, it is our holding that the judgment of the court below be, and the same is hereby, confirmed and affirmed. And it is hereby so ordered.

Judgment affirmed.