IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: ADINYIRA, JSC (PRESIDING)

DOTSE, JSC

BAFFOE-BONNIE, JSC

GBADEGBE, JSC

BENIN, JSC

CRIMINAL APPEAL

NO. J3/03/2017

14TH FEBRUARY, 2018

ITALIO GERVASIO ROSERIO CASTILLO (a.k.a ITALO CABEZA CASTILO)	……..	APPELLANT
VRS		
THE REPUBLIC	……	RESPONDENT

JUDGMENT

DOTSE, JSC:-

The appellant herein was charged and tried jointly with two others, (namely Joel Mejia Duarte Moises (A1) and Vasquez Gerardo Duarte David (A3) at large) on three counts, convicted and sentenced by the trial High Court presided over by Ayebi J, (as he then was) on 13th day of April 2007 and sentenced to 20 years IHL on all counts to run concurrent.

The three counts which the appellant and the others referred to supra faced are the following;-

COUNT 1

Conspiracy to import Narcotic Drugs without licence issued by the Minister of

Health contrary to Section 23 (1) of Act 29/60 and Section 1 (1) of PNDCL 236.

COUNT 2

Importation of Narcotic Drugs without lawful authority contrary to section 1 (1) of the Narcotic Drugs (Control Enforcement and Sanctions) Act, 1990, PNDCL 236.

COUNT 3

Conspiracy to commit crime namely possessing Narcotic Drugs contrary to

Section 23 (1) of the Criminal Act, Act 29, (1960) and Section 2 of PNDCL 236.

BRIEF FACTS

The facts of this case admit of no controversy whatsoever. The Police, acting on a tip off led by then Superintendent Edward Tabiri, who later testified during the trial as PW1, went to H/No 348 at Mempeasem near Legon and cordoned it off. When the Police succeeded to gain access into the main house, they announced their presence whereupon (A1), Joel Mejia Duarte Moises a.k.a Joel Mejia was seen upstairs.

Police immediately arrested him and he led them to his room. Thereafter, searches were conducted into other rooms in the house. However, of particular relevance are the following incidents which led to the involvement of the Appellant herein.

During the search, the Police requested A1 to invite the person whom he claimed invited him to Ghana and who according to A1, owned the things found in the house.

However, during the telephone conversation, A1 started speaking Spanish to the person at the other end, whereupon the Police intervened and requested that other person to come over and bail A1.

Within thirty minutes A2, the appellant herein was seen entering the house. Upon seeing the Police, he attempted to retreat, but he was arrested by the

Police and sent upstairs. His cell phone was seized and when his contacts were scrolled, his contacts were found to contain BUDE which also appeared on A1's cell phone. This BUDE has been identified to be the same as Shamo also called Vasquez who is A3.

On the same 24/11/2005, AI and the Appellant herein together with the drugs and all the items retrieved from this Mempeasem House were taken to the Police CID Headquarters. The following day 25th November 2005, statements were taken from A1 and the Appellant with the assistance of Anthony Osei (PW7), the Spanish Interpreter. Evidence gathered during the investigations and adduced before the Court during the trial indicated that the Mempeasem residence was rented for A1 and the Appellant to reside in at the instance of A3, who got one Grace Asibele, his girlfriend to rent the said facility for the use of both A1 and Appellant who resided there until their arrest by the Police.

ITEMS OF RELEVANCE TO THE CHARGE SHEET FOUND IN THE HOUSE

1. **Three bottles of ammonia used as a precursor to turn cocaine into crack.**

2. **One henkelman vacuum machine used in compressing the cocaine into compact slabs/tablets.**

3. **Thirteen pieces of hand gloves used to protect hands during the processing of the drug.**

4. **A quality of white polythene wrappers used to wrap the cocaine after it has been compressed into tablets.**

5. Royal Dutch Airline (KLM) Cargo Stickers used to stick the boxes after the cocaine had been packed.

6. Brown cellotapes that are used to wrap the drug in order to isolate it from air and to prevent detection by the security.

7. **A fitting bottle that is used for testing and sniffing of Cocaine.**

8. Exercise books including shorthand note book showing record of sale of drugs to individuals and

9. Two Nokia cell phones showing contact names and other related information.

Particulars of Offences Charged

a. Particulars to Count 1

These state that the three accused persons in or about November, 2005 in Accra did act together with a common purpose to import into **Ghana 588 kilos of cocaine a narcotic drug without license issued by the Minister of Health.**

b. Particulars to Count 2

These specify that, the three accused persons did import into Ghana **588 kilos of cocaine, a narcotic drug without license issued by the Minister of Health.**

c. Particulars to Count 3

These also specify that the three accused persons acted together with a common purpose to possess a narcotic drug namely, cocaine.

CONVICTION AND SENTENCE BY TRIAL HIGH COURT

After trial, in a well and considered judgment, the learned trial Judge Ayebi J, (as he then was) convicted the appellant herein and the others after evaluating the evidence led as follows:-

> *"**On the totality of the evidence adduced by both the prosecution and the defence, I am satisfied that the prosecution has proved the guilt of A1 and A2 beyond reasonable doubt.** I therefore convict A1 on all the four counts against him. **A2 is also convicted on courts 1 to 3.**"*

It should be noted that, the appellant herein is the A2 refereed to supra.

On sentence, the learned Judge stated his reasons for the imposition of the sentence as follows:-

> *In Ghana now, we read of arrest of drug traffickers almost every week in the media. So it cannot be gainsaid that the incidence of drug trafficking has engulfed the whole country.* ***In the case of the accused in this case, it appeared they have made Ghana a distribution point as well, hence the large quatity they brought into the country. To mark the abhorrence of decent minded Ghanaians to the narcotic business, I am minded to mete out a sentence commensurate with the severity of the offence to the accused.*** *That being so*
>
> *(1) A3, the master-mind of the business is sentenced to 25 years IHL each on counts 1, 2 and 3.*
>
> *(2) A1 who was found physically in possession of the narcotic drug and items for processing the Cocaine into crack is also sentenced to 25 years IHL each on counts 1, 2, 3 and 4.*
>
> *3.* ***A2 who joined business later in Ghana is sentenced to 20years IHL on counts 1, 2 and 3.***
>
> ***4.*** **The sentences of A1 and A2 shall be deemed to commence on 24th November 2005 when they were arrested and taken into custody. In all cases, sentences will run concurrently"**

APPEAL BY APPELLANT TO COURT OF APPEAL AND IT'S DISMISSAL

On the 9th June 2016, the Court of Appeal in a unanimous decision dismissed the appeal by the appellant herein against both conviction and sentence. In a well considered judgment, the Court of Appeal per Kusi-Appiah J.A dismissed the appeal in the following terms:-

> "*I am at a loss as to what informed the appellants contention that his conviction was not based on law and invited the court to set aside his conviction and sentence and ipso facto acquit and discharge him.*

I must say that evidence on record indicates that the trial Judge after examining the evidence before him from the parties (i.e. prosecution and defence/accused including drawing up inferences and deductions from the conduct of the appellant, convicted the appellant and two others on circumstantial evidence and imposed the sentence as stated above. The trial Judge did not err when he convicted the appellant on the circumstantial evidence. See ***Kamil v The Republic [2011] 1 SCGLR 300****. Emphasis*

As regards the imposition of the 20 years IHL sentence on the appellant, the Court of Appeal reviewed the record of appeal, and again speaking through Kusi-Appiah J.A stated as follows:-

> *"****It is my view that the trial Judge assigned very good reasons for the exercise of his discretion to impose the deterrent sentence on the appellant.****"* Emphasis

Dissatisfied with the judgment of the Court of Appeal, the appellant has appealed that decision to this court on the following grounds of appeal:-

GROUNDS OF APPEAL TO THE SUPREME COURT

a. The Court of Appeal erred in both law and fact when it affirmed the Appellant's conviction and sentence.

b. The evidence on record is against the judgment of the Court of appeal. Thus the judgment of the Court of Appeal is not supported by the evidence.

c. Additional grounds may be filed upon receipt of the certified true copy of the judgment.

ADDITIONAL GROUNDS OF APPEAL

1. The Court of Appeal erred when it affirmed that prima facie case was made against the Appellant at the trial.

2. The Court of Appeal erred when it affirmed the conviction of the Appellant even though the prosecution failed to prove the case beyond reasonable doubt.

3. The Court of Appeal erred by affirming the conviction of the Appellant even when the trial Judge had failed to adequately consider the defence of the Appellant.

DECISION OF THIS COURT

We have considered and reviewed the entire record of appeal. We have also considered the written statements of case of learned counsel for the Appellant Augustines Obour and learned Chief State Attorney for the Republic/Respondent, K. Asiama-Sampong, in respect of all the grounds of appeal. We have also reviewed the case law especially the reliance on circumstantial evidence in this case to convict the Appellant and the two others.

Under the circumstances, we reiterate the statement by this court in it's unanimous decision in the case of ***Gligah & Atitso v The Republic [2010] SCGLR 870 at 884*** on circumstantial evidence, as follows:-

> ***"It was generally accepted that when direct evidence was unavailable, but there were bits and pieces of circumstantial evidence available (as in the instant case) and when those were put together, they would make stronger, corroborative and more convincing evidence than direct evidence".*** Emphasis

In the instant case, both lower courts, i.e. the trial High Court and the Court of Appeal were therefore right in making the necessary inferences from the available evidence. See sections 18 (1) and (2) of the Evidence Act, 1975 NRCD 323.

For example, in this case, the circumstantial evidence against the appellant is overwhelming. The following narration will suffice to establish the circumstantial evidence against the appellant.

1. Appellant was arrested in the Mempeasem House contrary to his evidence that he was arrested on the street in front of the house. Reference evidence of PW2 and PW3.

2. Appellant claimed he was lodging in a Hotel in Achimota since his arrival in Ghana four days before his arrest, but was unable to lead the Police team to the said hotel. On the contrary, Appellant was found to be resident in the Mempeasem House.

3. Appellant has been proven to have called both A1 and A3, on his mobile phone. Indeed A1 and Appellant knew each other in Venezuela before this case.

4. The prohibited substance, cocaine was found in the Mempeasem House where the Appellant was found to be resident at all material times.

Taking all the above factors and pieces of evidence into consideration, we are of the opinion that there is indeed no merit in this appeal and it is accordingly dismissed.

In arriving at the above decision, we have reviewed the grounds of appeal and are of the view that, for the reasons stated in the Court of Appeal judgment, it is considered inappropriate to alter both the conviction and sentence. There is indeed the need to stamp out this menace of dealing in narcotics by both Ghanaians and foreigners in Ghana. Deterrent sentences are therefore in order considering the quantity of drugs involved and the sophisticated method by which the appellant and the others operated in committing the offence.

For purposes of emphasis, we confirm that the deportation order made against the Appellant by the learned trial Judge still stands and must be executed at the end of his sentence.

The appeal therefore fails in it's entirely and is accordingly dismissed.

J. V. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

ADINYIRA, JSC:-

I agree with the conclusion and reasoning of my brother Dotse, JSC.

S. O. A. ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my brother Dotse, JSC.

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

GBADEGBE, JSC:-

I agree with the conclusion and reasoning of my brother Dotse, JSC.

N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

BENIN, JSC:-

I agree with the conclusion and reasoning of my brother Dotse, JSC.

A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

COUNSEL

AUGUSTINE OBOUR MINTA FOR THE APPELLANT.

K. ASIAMA-SAMPONG, CHIEF STATE ATTORNEY WITH HIM VICTORIA ASIEDUWAA, SENIOR STATE ATTORNEY FOR THE RESPONDENT.