



IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Criminal Appeal No. 0031 of 2016

In the matter between

APIYO IRENE

APPELLANT

And

UGANDA

RESPONDENT

Heard: 23 June, 2020.

Delivered: 14 August, 2020.

Criminal Procedure — Plea of Guilt — section 204 (3) of The Magistrates Courts Act — No appeal is allowed in the case of any person who has pleaded guilty and has been convicted on that plea by a magistrate's court except as to the legality of the plea or to the extent or legality of the sentence.— An appellate Court can only interfere with a sentence imposed by a trial Court where the sentence is either illegal, is founded upon a wrong principle of the law, or Court has failed to consider a material factor, or is harsh and manifestly excessive in the circumstances — When sentencing a convict, the court should, subject to any maximum or minimum terms set by parliament, impose the least severe sentence that still achieves both goals, while also considering the need for societal protection.

JUDGMENT

STEPHEN MUBIRU, J.

Introduction:

[1] The appellant was charged with the offence of Arson C/s 327 of *The Penal Code Act*. It was alleged that the appellant on 12th November, 2016 at Laliya Deol

village, Bar Dege Division in Gulu District, wilfully and unlawfully set fire to two grass thatched houses, the property of Ocan Justine. She was convicted on her own plea of guilty and sentenced to eight years' imprisonment.

- [2] The facts as narrated to the court by the prosecution and confirmed as correct by the appellant are that the appellant had cohabited with the complainant for one year and five months when their relations became strained. She was attacked by members of the complainant's family and forced into separation. She was not allowed to take any of her belongings from the home, which sent her into a fit of rage. On 12th November, 2016 at around 11.30 pm the complainant's two houses were set on fire, destroying all of the complainant's household property, including academic certificates. The appellant was suspected to be the arsonists and she was arrested. She admitted having set the houses on fire.
- [3] When sentencing the appellant, the trial Magistrate stated that whatever wrongs the complainant's family had done to her, the appellant's reaction was inappropriate. It was out of proportion. She should have been able to report to the authorities whatever it was that her in-laws had done to her. Valuable property was lost and she does not appear to have the capacity to compensate the victim. She should be taught a lesson from which others in the community are to learn. The appellant was accordingly sentenced to eight (8) years' imprisonment.
- [4] The appellant filed a notice of appeal but did not file a memorandum of appeal nor submissions in support of the appeal, despite having been notified and given a month's period to do so. Consequently, neither did counsel for the respondent file submissions. However, considering that under section 28 (1) of *The Criminal Procedure Code Act*, a criminal appeal is commenced by a notice in writing signed by the appellant or an advocate on his or her behalf, it was incumbent upon this court to consider the merits of the appeal, despite the lapses of the appellant.

- [5] 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”).
- [6] 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*). 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*).
- [7] Perusal of the record shows that the appellant was convicted and sentenced on her own plea of guilty. According to section 204 (3) of *The Magistrates Courts Act*, no appeal is allowed in the case of any person who has pleaded guilty and has been convicted on that plea by a magistrate’s court except as to the legality of the plea or to the extent or legality of the sentence. In the instant case, it is only the extent of the sentence that may be called into question.
- [8] An appellate court will not interfere with sentence imposed by a trial Court merely because it would have imposed a different sentence. It is now settled, that an

appellate Court can only interfere with a sentence imposed by a trial Court where the sentence is either illegal, is founded upon a wrong principle of the law, or Court has failed to consider a material factor, or is harsh and manifestly excessive in the circumstances (see *James v. R.* (1950) 18 E.A.C.A. 147; *Ogalo s/o Owoura v. R.* (1954) 24 E.A.C.A. 270; *Kizito Senkula v. Uganda*, S.C. Criminal Appeal No. 24 of 2001; *Bashir Ssali v. Uganda*, S.C. Criminal Appeal No. 40 of 2003, and *Ninsiima Gilbert v. Uganda*, C.A. Criminal Appeal No. 180 of 2010). The sentencing court, unlike the appellate court, has the benefit of being able to directly assess the other evidence, the testimony and the submissions of the parties, as well as being familiar with the needs and current conditions of and in the community where the crime was committed.

[9] Five factors guide courts when deciding on an appropriate sentence, namely; just punishment, rehabilitation, deterrence, denunciation and community protection. A sentencing court must impose a sentence that is sufficient, but not greater than necessary, to: reflect the seriousness of the offence; promote respect for the law; provide just punishment for the offence; adequately deter criminal conduct; protect the public from further crimes by the convict; and provide the convict with needed educational or vocational training, or medical care. The most important offence-specific sentencing considerations are the extent and value of the damage or destruction caused; the risk caused by the offender's conduct; the method used to cause damage or destruction; the degree of planning involved; the offender's purpose; the type of property damaged; and the drain caused on public resources.

[10] In general terms criminal law theorists believe that sentences serve two purposes. First, they serve the goal of deterring future crime by both the convict and by other individuals contemplating a committal of the same crime. Second, a sentence serves the goal of retribution, which posits that the criminal deserves punishment for having acted criminally. When sentencing a convict, the court should, subject to any maximum or minimum terms set by parliament, impose the

least severe sentence that still achieves both goals, while also considering the need for societal protection (the principle of parsimony). The length of the term of imprisonment depends on the seriousness of the offence and the maximum penalty for the crime allowed by law.

- [11] The maximum punishment for the offence of Arson C/s 327 of *The Penal Code Act* is life imprisonment. In this case, the appellant was sentenced to eight year's imprisonment. When sentencing the appellant, the trial Magistrate considered both the mitigating and aggravating factors. The sentence is neither illegal, nor is it founded upon a wrong principle of the law. There is neither a failure to consider a material factor nor or is it harsh and manifestly excessive in the circumstances. It is not disproportionate in light of the aggravating factors. There is therefore no justifiable reason to interfere with it.

Order:

- [12] In the final result, the appeal has no merit. It is accordingly dismissed.

Delivered electronically this 14th day of August, 2020Stephen Mubiru.....
Stephen Mubiru
Resident Judge, Gulu

Appearances

For the appellant :

For the respondent :