CRI/APN/77/2012

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:

MOLEBOHENG 'NEKO	Applicant
And	
THE DIRECTOR OF PUBLIC PROSECUTIONS	1st Respondent
THE CLERK OF COURT (Maseru)	2nd Respondent
HIS WORSHIP THE MAGISTRATE	3rd Respondent
THE PRINCIPAL SECRETARY MINISTRY OF WORKS AND TRANSPORT	4th Respondent
THE CHAIRMAN PUBLIC SERVICE COMMISSION	5th Respondent
THE ATTORNEY GENERAL	6th Respondent

JUDGEMENT

Coram	**:**	**Hon. Monapathi J**
Date of Hearing	**:**	**2nd May, 2012**
Date of Ruling	**:**	**13th June, 2012**
Date of Judgement	**:**	**1st August, 2012**

SUMMARY

Where a single witness testified as an accomplice and statements of witnesses were admitted by court, the latter constitute corroboration in proper cases such as the present. In any event such an accomplice may be a credible witness in terms of section 238 of the Criminal Procedure and Evidence Act 1981 such as in the instant matter. The conviction and sentence were not reviewable. In addition there were no gross irregularities nor illegalities nor prejudice.

[1] This is an application for review of the proceedings in CR 2375/2010 of Maseru Magistrate Court in which the Applicant (Accused) had been convicted and sentenced to four (4) years imprisonment or alternatively to pay a fine of Four Thousand Maloti (M4,000.00). In my opinion the sentence was rather lenient to the extent that it offered that option of a fine. The offence had been quite serious. The Accused was very lucky indeed. The Applicant avoided a custodial sentence and paid the fine.

[2] Besides the issue of reviewability and whether the Applicant ought to have appealed, the main issue became whether the evidence tendered supported the conviction. With regard to the first issue Mr Mahao argued that Applicant had also failed to show that there was gross irregularity. I agreed that such irregularity was not demonstrated. Indeed the intervention of the courts is conditioned by prejudice to the Accused and avoidance of illegality. Courts do not interfere merely because there is an irregularity, however, insignificant. See ***Mathula Litšoane v Director of Public Prosecutions and Another***. ***CRI/APN/758/2006***, per Maqutu J. In any event

I would have found that there is no illegality nor gross irregularity in the instant matter.

[3] It is common cause that the offices of the Department of Transport were set on fire on the night of the 11th December 2010. The Applicant and other co-accused were charged with the crime of arson. One of the accused later became an accomplice. He was the only witness who testified. It is also common cause, and it is significant that, the rest of the evidence was by way of the witnesses' statements which were admitted by the defence as forming part of the evidence. Admittedly the accomplice was a single witness. In my view, if there were such admitted statements the Applicant ought not to speak about absence of corroborating evidence. This is so unless the Applicant does not equate the admitted statements to evidence. If so, what did the Applicant estimate the value of the statements to be?

[4] The challenge in this application is that the Learned magistrate, when convicting the Applicant had left out important material evidence which if he had considered he could have arrived at a different decision. Mr. Chobokoane for Applicant referred the court to the case of ***Standard Bank of Bophuthatswona Ltd v Renold No and Others 1995 (3) SA 74 (BG)*** at page 89. Surprisingly such allegedly "ignored" evidence was not spelled out. The situation, as I was persuaded to see, was that the evidence of witness's statement was adopted by the Learned magistrate. It was not left out. It was not ignored. The situation in ***Standard Bank of Botswana*** case seems to be at variance with the circumstances of the present case or should be distinguished where one has regard to what is said at pages 89, to wit:

> "our courts have held that where a decision-maker takes a decision unsupported by evidence, or by some evidence which is insufficient reasonably to justice the decision arrived at, or where a decision maker ignored uncontroverted evidence he is obliged to reflect on, the decision arrived at will be null and void." See ***Standard Bank Bophuthatswana Ltd v Reynold No. and Others 1995 (3) SA 74 (BG) (supra) at page 90***.

And again at page 90 where it is said that:

> "Where the uncontroverted evidence is placed before the decision maker and he chooses not to consider it which he is obliged to do so, the court will set aside his decision on review."

It seems to me that the opposite occurred. It is that, as a matter of fact, the magistrate reflected on the evidence.

[5] Mr. Chobokoane argued that the Learned magistrate convicted the Applicant solely on evidence which was uncorroborated. He argued further that as a matter of principle the court must consider another independent evidence that is led by Crown that should corroborate the evidence of accomplice witness. It was his contention that the evidence of the accomplice has not materially been corroborated. This he said despite the evidence contained in the statements that were admitted with the consent of the Accused.

[6] It was Counsel's submission that the magistrate has made a decision on unsupported evidence and left and ignored a material, admitted and unchallenged evidence. Again this evidence was not spelled out. In other words Mr. Chobokoane was saying that had the magistrate considered all admitted statements holistically, he could not have convicted the Applicant and as a result the decision must be viewed and be set aside. The question was in what respect was the evidence challenged when as a matter of fact those statements were admitted as unchallenged.

[7] Mr. Mahao for Crown, on the other hand, argued that when a judicial officer is faced with a case, he does not take evidence in piece meal but the evidence should be treated collectively and cumulatively. He went further to say that Applicant has failed to show before court that she suffered prejudice as a result of that unsupported evidence. I agreed with Counsel.

[8] It was argued further by the Crown that the Applicant ought to have shown that the proceedings were not in accordance with real and substantial justice. Mr. Mahao stated that the Learned magistrate did not only rely on the evidence of PW1 who was an accomplice but he considered evidence that was admitted by the Accused, which could only be amount to being sufficient corroboration.

[9] It is trite law that the evidence of an accomplice should be treated with extreme caution and it is also trite that a trial court must consider the totality

of the evidence to determine if the guilt of any accused person has been proved beyond reasonable doubt. See ***Senyane v R C of A (CRI0 No. 8/09***.

[10] In the case of ***R v Baskervill 1916 (2) KB 658*** Lord Reading CJ defined the word corroboration as follows:

> "We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is which confirms in some material particular not only the evidence that the crime has been committed but also the prisoner committed it."

It is clear from the record that the admitted statements were acknowledged by the magistrate. See Annexure "B" – "K" on pages 68 to 79 of the record. Moreover, he found value in the admitted statement of one policeman because it corroborated the evidence of PW1 (accomplice) in many aspects. That evidence in itself was never controverted by the Accused. The magistrate believed the uncontroverted evidence of this policeman and convicted Applicant accordingly.

[11] In the light of these factors it is important to bear in mind the correct approach in analyzing evidence as laid down by the court in the case of ***Moshepi and Another v Rex 1980-1984 LAC 57*** at 59 namely:

> "The question for determining in whether in the light of all the evidence adduced at the trial, the guilt of the Appellants was established beyond reasonable doubt. The breaking down of a body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it. But in doing so, one must guard against a tendency to focus too intently upon the separate and individual parts of what is, after all, a mosaic of proof. Doubts about one aspect of the evidence let into a trial may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated against together with all the other available evidence."

The Court of Appeal quoted this case with approval in ***Senyane's*** *case* (*supra*). As Mr. Mahao has correctly submitted that, considering the mosaic (of a number of facts and circumstances) as a whole, therefore, the learned magistrate did not convict on the basis of a single evidence of an accomplice witness. Indeed it is right to say that, in the light of the Crown's evidence, as correctly admitted by the trial court, and viewed in its totality, the only reasonable inference to draw is that the evidence of PW1 was corroborated materially by the evidence of which showed that containers of petrol (picked up at a filing station) were found at the scene of the crime. I respectfully agreed that it was such corroboration that Hoffman in ***South Africa Law of Evidence,*** 4th Edition, at page 577 speaks about. The learned author therein said:

> "Before relying upon the evidence of an accomplice the court should find some circumstances which can properly be regarded as reducing

the damage that it might convict the wrong person. Corroboration is the best known and perhaps to most satisfactory of such safeguard."

[12] The other evidence which the magistrate specifically pin-pointed surely corroborated the evidence to the effect that the crime was committed by the Applicant. Take for example from page 101 of the record where the learned magistrate recites the evidence of PW1 (after setting the fire) thus:

> "Where I saw the state of affairs on their second visit she was jubilant as the mission has been accomplished the flames were seen as far as the Central Bank of Lesotho. They returned to the place of P3 all of them where PW1 and PW2 washed their hands because they smelled petrol. This piece of evidence was never challenged. The Applicant was legally represented and did not contest the Crown's application for the admission of the statement into evidence and to it being used against her."

[13] Finally, I need just remark, without discussing fully, that there is nothing wrong in law to convict on the evidence of single witness provided, he is a competent and credible witness. That is why the legislature in its wisdom provided in the ***Criminal Procedure and Evidence Act, 1981*** section 238 that:

> "…. Subject to sub-section (2) any court may convict any person of any offence alleged against him in the charge of the singly evidence of any competent and credible witness."

In any event I did not hear the Applicant to have argued that the PW1 had not been a credible witness.

[14] The learned magistrate acted properly in the way she concluded. For these reasons, the application ought to be dismissed.

T. E. MONAPATHI
JUDGE

For Applicant	:	Adv. Chobokoane
For Respondents	:	Adv. Mahao

Judegment noted by Adv. Shale