

036)

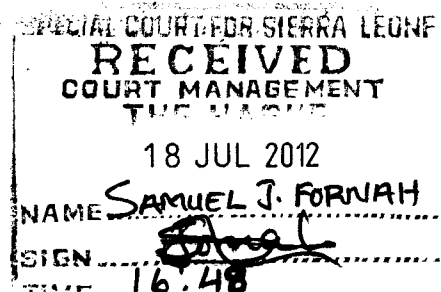
SCSL-11-02-T
(235-241)

235



SPECIAL COURT FOR SIERRA LEONE
TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding
Registrar: Ms. Binta Mansaray
Date filed: 18th July, 2012



Independent Counsel

Against

**Hassan Papa Bangura
Samuel Kargbo
Santige Borbor Kanu
Brima Bazzy Kamara**

Case No. SCSL-11-02-T

PUBLIC

**DEFENCE MOTION FOR JUDGMENT OF ACQUITTAL ON BEHALF OF BRIMA BAZZY
KAMARA PURSUANT TO RULE 98 OF THE SPECIAL COURT RULES OF PROCEDURE AND
EVIDENCE.**

Independent Counsel:
Mr. Robert L Herbst
Mr. Mohamed Bangura

Counsel for the Accused:
Mr. Melron Nicol-Wilson
Chief Charles A. Taku
Mr. Kevin A. Metzger
Mr. A.F. Serry Kamal

Office of the Principal Defender:
Mrs. Claire Carlton-Hanciles

BACKGROUND

1. At the close of the prosecution's case on July 4th, 2012, Defence Counsels indicated that they all intended to make a Rule 98 Motion for a Judgment of Acquittal for their clients but needed some time to digest the information in the transcript so as to enable them to reference relevant sections.
2. Justice Doherty indicated that per Rule 98, No Case Submissions are oral but due to the longish adjournment and in the interest of judicial economy Counsels for the Defendants should file written no case submissions no later than July 18th, 2012 and the Independent Prosecutor should file his response by August 1st, 2012.

The Charges

3. This Motion for Judgment of Acquittal is filed on behalf of Ibrahim Bazy Kamara who stands charge by an Order in Lieu of Indictment of three counts.

Count 1: Knowingly and willfully interfering with the Special Court's administration of justice by offering a bribe to a witness who has given testimony before a Chamber in violation of Rule 77(A)(iv).

Particulars: On or about 27th November 2010 to 16 December 2010 from Mpanga Prison, Rawanda, Brima Bazy Kamara offered a bribe to a protected witness TFI 334, who gave testimony before Trial Chamber II, in the proceedings of Prosecutor v. Brima, Kamara and Kanu, in return for recanting his previous testimony in that trial both directly by telephone on or around 29th November 2010, and through instructions to Samuel Kargbo and Hassan Papa Bangura.

Count 2: Knowingly and willfully interfering with the Special Court's administration of justice by otherwise interfering with a witness who has given testimony before a Chamber in violation of Rule 77(A)(iv).

Particulars: On or about 27th November 2010 to 16 December 2010 from Mpanga Prison, Rawanda, Brima Bazy Kamara attempted to influence a protected witness TFI 334, who gave testimony before Trial Chamber II, in the proceedings of Prosecutor v. Brima, Kamara and Kanu to recant his testimony in that trial both directly and indirectly by telephone on 29 November 2010 and through instructions to Samuel Kargbo, and Hassan Papa Bangura aka Bomblast

Count 3: Knowingly and willfully interfering with the Special Court's administration of justice by otherwise disclosing information relating to proceedings in knowing violation of an order of a Chamber in violation of Rule 77(A)(ii).

Particulars: On or about 29 November 2010 Brima Bazzy Kamara from Mapanga prison Rawanda disclosed confidential information in knowing violation of an order of Trial Chamber I (Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-T-180, decision on Prosecution Motion for Modification of Protected measures for witnesses dated 5 July 2004 by revealing the identity of a protected witness TFI-033 to Samuel Kargbo during a telephone conversation.

The Prosecution's Case Against Ibrahim Bazzy Kamara

4. The prosecution called 5 witnesses to prove their case, namely, Samuel Kargbo (the second accused) who had entered a plea bargaining agreement with the Independent Counsel, TF1 334 who elected to have his protected witness status removed (Alimamy Bobson Sesay) Andrew Daniels, Joseph Saffa, and Hillary Sengabo.
5. Samuel Kargbo became the first prosecution witness against all the other accused. The prosecution placed great store on his testimony against Ibrahim Bazzy Kamara.
6. Samuel Kargbo alias Sammy Ragga started testifying on the 21st June 2012. He testified in chief to receiving a call late in November and early December 2010 from the fourth accused Ibrahim Bazzy Kamara. He said Ibrahim Bazzy Kamara called him on his cell phone. When he asked him he asked the fourth accused why, he responded that he was expecting him and others to assist them in getting them out of prison in Rwanda. He testified that the fourth accused asked him to talk to 334 to recant his statement. When he asked the fourth accused why, he responded that because his lawyer in Ghana had told him that if they talked to 334 to recant his statement, the authorities would reduce their sentences or set them free.
7. He further said in his evidence in chief that the fourth accused said that because the Special Court had not fulfilled the promises made to 334 the fourth accused would like to raise some funds for 334 for him to recant his statement. Then he is alleged to have called 334. He alleged also that at that time 334 said "Well, I am at Congo Water by the Bai Bureh Highway, come and meet me there. Then I said okay. I am coming". Then I went and meet him there. By then he was going along to Newton. Then I said, okay let me go with you. He testified also about the alleged response of TFI 334 as well as testified to his reaction and countenance. No date is given for this conversation.

8. The telephone records tendered by P5 Hillary Sengabo do not bear of a telephone call to the cell phone of the witness in November or December 2010. The prosecution made the allegation and it is its duty to prove its case beyond a reasonable doubt. The witnesses mobile phone number at the time was not given nor did the prosecution provide the mobile phone records of witness.

9. The witness went on to give evidence of further content by the fourth accused when he was being driven by P2 334 to PWD junction Kissy. Again no mobile record evidence was produced to prove that that other mobile conversation took place. At that point TFI 334 is alleged to have said he did not want to talk to the fourth accused Ibrahim Bazy Kamara. He deposed that there were discussions with Bazy, 55 and Gullit. The witness alleged that there was a conversation between 334 and the men in Rwanda out of his earshot. When 334 returned the mobile phone to him he alleged that he again spoke to Bazy. According to him, it is during that same connection that Bazy is alleged to have asked him for 033 by his actual name. He also mentions that the fourth accused Ibrahim Bazy Kamara et al promised 334 and himself money.

10. The evidence of 334 ought to stand alone:
 - (1) The messages (calls) were alleged to have been made by mobile phone. These phones always keep records of calls which can be traced by the respective phone companies. The records produced by the Prosecutor do not substantiate the occurrence of the alleged calls.
 - (2) There were issues as regards the actus reus – interfering with the administration of justice which were central to the charge. All of them for example the contact by Bazy out of the blue to Sammy who had never telephoned him before, and whose number Sammy himself admitted he did not give to Bazy.
 - (3) The visits to Mr. Mansaray's chambers at Robert Street, Freetown. The call by Mr. Mansaray before Sammy, 334, and Bomblast arrived at Robert Street. The alleged call to the Robert Street office by Bazy when Bomblast and Sammy where alleged to be in Mr. Mansaray's office. The fact of the call by Bazy ought to have been established.
 - (4) The only person who is alleged to have spoken to Bazy is Samuel Kargbo aka Sammy Ragga. The prosecution should link the accused to the alleged crime or crime scene for the accused to be called to proffer an explanation. No such link was established or made,.

11. The other witnesses 334, Mr. Joseph Saffa, Andrew Daniels and

Hilary Sengabo with respect do not in any significant way shift or further the case for the prosecution against the fourth accused. 334 never spoke to Bazy. He did not deal with Bazy. He alleges that he was told by Sammy and others that Bazy said one thing or the other. There was absolutely no contact between him and Bazy.

12. Mr. Andrew Daniel was a member of the Defence team during the AFRC trial before Trial Chamber I. He was actually Tamba Brima's Lawyer at the trial but was on very good terms with Bazy and his family. He was hoping to be appointed pro bono Counsel for the convicts to Rwanda. That appointment did not materialize. He was never told of any criminal enterprise and did not suspect anything criminal was being planned when he spoke to Bazy.
13. Mr. Joseph Saffa the investigator who documented the status reports made by 334 for the reasons merely took statements and made entries in his own capacity.
14. Mr. Hillary Sengabo the Deputy Commissioner of Mpanga Prison in Rwanda produced the phone call log Book and an extract of it. He was not aware of any criminal enterprise or plan to subvert justice.
15. Taking all the evidence into consideration, it is submitted that the fourth accused Brima Bazy Kamara does not have a case to answer.

PROSECUTION HAS FAILED TO PROVE A CASE AGAINST THE FOURTH DEFENDANT IBRAHIM BAZY KAMARA FOR WHICH HE SHOULD ANSWER

16. The duty of the prosecution throughout is to prove its case beyond a reasonable doubt. Rules 77(a)(iv) and 77(A)(ii) all use the words "Knowingly and willfully interfering". These words import mens rea. i.e. an intention to interfere with the administration of justice. The actus reus is interfering by telephone around November 29, 2010 through instructions to Samuel Kargbo and Hassan Papa Bangura".
17. In so far as Ibrahim Bazy Kamara is concerned he is in prison at Mpanga in Rwanda. His only means of communication is through the mobile phone the prison has. P5 Hilary Sengabo produced their record book. There is no record

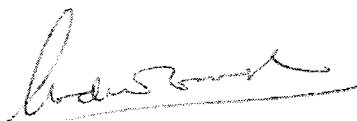
of any mobile phone call to Samuel Kargbo alias Ragga made by the fourth accused Ibrahim Bazy Kamara. Infact Samuel Kargbo did not have any phone number for Bazy. The last time he saw him was when he Bazy was at Central Prison Pademba Road before he was moved to the Special Court Detention Centre. He did not have any contact with Bazy again after Pademba Road Prisons until when out of the blue Sammy alleges that Bazy called him in late November & early December to hold such a delicate discussion with him.

18. The PWD discussion and the Road to Newton discussions are very crucial in this case. Considering the burden of proof and the standard of proof required since phone companies do have records for each call, it is imperative that the telephone records for the days these incidents were alleged to have taken place should have been produced to prove that the alleged calls were made by the fourth accused. No such record was produced to prove that what the witness is alleged to have said is true. What is required is proof. The prosecution have failed to prove an essential element the fact of the mischief telephone calls (the actus reus) if the actus reus is not proved the question of the accused's mens rea does not even exist.
19. The prosecution had the opportunity of producing the log card of the various telephone numbers of Samuel Kargbo alias Sammy Ragga and Alimamy Bobson Sesay. They did not.
20. Alimamy Bobson Sesay said under cross-examination by the fourth accused's counsel that he never spoke to the fourth accused. Prior to their incarcerations at Pademba Road he had not had contact with Bazy who was by far his senior or boss.

SUBMISSION

It is submitted with respect that the prosecution have failed to discharge the standard of proof imposed on them to prove each and every ingredient of a charge beyond all reasonable doubt. In the result the prosecutions case must fail. The fourth accused ought to be acquitted and discharge on all three charges.

Respectfully submitted.



A.F. SERRY-KAMAL.
Counsel for the Fourth Accused Brima Bazzy kargbo
18th July 2012.