

IN THE COURT OF APPEAL FOR BOTSWANA

Criminal Appeal No. 35 of 1983
High Court Criminal Appeal No. 286 of 1982

In the matter between:

OBOLOKILE BOLANE

Appellant

and

THE STATE

Mr. G. R. Gareebine for the Appellant
Mr. S. A. Afful for the State

JUDGMENT

CORAM:

MAISELS, P
O'BRIEN QUINN, CJ
AMISSAH, JA

O'BRIEN QUINN, CJ

This application by the Appellant for leave to appeal, after having been refused leave to appeal by the High Court, was heard and dismissed this morning without the State having been called upon, and this judgment gives the reasons for the dismissal of the application.

The appellant was convicted by the Chief Magistrate at Francistown on 27th September 1982 on a charge of being in unlawful possession of a rough or uncut precious stone valued at P10 581.10 and was sentenced to 6 years' imprisonment of which two years were conditionally suspended for 3 years.

The facts, upon which the parties are in agreement, were that, on information received, the appellant was arrested by the Police who suspected that he was in possession of an uncut diamond. After interrogation by the Police the appellant went with the Police to his house where he spoke to his wife who took them all to another hut where another person lifted up a 44 gallon drum and took out from under it a rough or uncut diamond wrapped in paper. This rough or uncut diamond was stated by other witnesses to be the same diamond which had been stolen from the Orapa Diamond mine a few days previously.

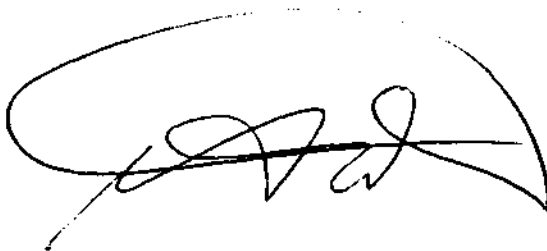
The main ground argued was that the evidence of the alleged pointing out of the uncut diamond by the appellant was not sufficient to prove that it was in the possession of the appellant or that the appellant knew that it was an uncut diamond or that there was an uncut diamond in the parcel taken out from under the 44 gallon drum.

However, on the evidence, it is clear that it was the appellant who took the Police to his house, and that it was the appellant who spoke to his wife who then went with the appellant and the Police to the other house and who, after speaking to another person, caused that person to uncover the rough or uncut diamond. In these circumstances the inference is irresistible that the appellant was the prime mover in the uncovering of the uncut diamond and that he was aware of its presence and of what it was.

It is to be noted that the appellant was not charged with stealing the uncut diamond but with its unlawful possession and, on the evidence before the Chief Magistrate, there was, as I see it, no doubt that he was in possession of it.

In these circumstances, therefore, I cannot see any reason why leave to appeal should be granted and leave is, accordingly, refused and the conviction and sentence will stand.

GIVEN at the Court of Appeal sitting at Lobatse this 20th day of July 1983.



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J. A. O'BRIEN QUINN
CHIEF JUSTICE

I agree: *I. A. Maisels*
I. A. MAISELS
JUDGE PRESIDENT

I agree: *A. N. E. Amissh*
A. N. E. AMISSAH
JUDGE OF APPEAL