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IN THE COURT OF APPEAL OF BOTSWANA

Criminal Appeal No. 22 of 1991
High Court Crim. App. No. 143 of 1990

In the matter of:

TUKUNA JEREMANE

Appellant

vs

THE STATE

Respondent

Mr. M. Masoba for the Appellant
Mr. P. S. Sedie for the State

J U D G M E N T

Coram: A.N.E. AMISSAH, J.P.:
G. BIZOS, J.A.:
W.H.R. SCHREINER, J.A.:

SCHREINER, J.A.:

On about the 15th October, 1989 the house of Mr. A. Solomon was broken into and a variety of articles stolen. Amongst the articles, valued in all at P48 978.00, were three gold chains identified by Mrs. Solomon as being things taken from her husband's house - a gold chain with gold nugget pendant (P1 000.00), a gold chain bracelet with a charm of Africa (P3 000.00) and a gold rope chain (P950.00). These articles surfaced a week later when they were offered for sale to a certain State witness by the Appellant.

The Appellant, a panel beater, was wearing them round his neck when he offered them for sale at prices which have no relation to their value. It was on this evidence that the Appellant was convicted of housebreaking. The Appellant elected to give evidence and said he had seen the jewellery for the first time at the police station. This evidence was not true since the Magistrate, rightly in my view,

accepted the evidence which went to show that it was the Appellant who offered the three gold chains for sale. There was nothing further which could point to his guilt. It follows that if the principle of recent possession did not in the present case prove his guilt on the offence as charged the conviction cannot stand.

It is apparent from the authorities dealing with the inferences to be drawn from possession of recently stolen goods coupled with a false explanation to the Court or the police or to some reliable witness that the facts of each case must be closely examined in order to determine whether there is no reasonable possibility that the accused was not guilty. In S v. Rama 1966(2) S.A. 398(A) the possession of three high quality watches out of a consignment of one hundred and eighty-nine by a shopkeeper who sold cheap watches coupled with a false denial of possession was held to justify a conviction on a charge of theft of the two cases containing the watches. On the other hand in S v. Skweyiya 1984 (4) S.A. 708(A) a motor car driven by the Appellant was stopped at a road block near Milnerton in Cape Town and found to contain certain high fidelity sets, a double bedspread and some empty cartons for the conveyance of Telefunken television sets. This was on the 6th June, 1980. On the 21st May, 1980 there had been a storebreaking at Worcester, a town at least one hundred and fifty kilometres from Cape Town, during which a large quantity of goods were stolen. The goods in the boot of the car were identified as being articles which had been taken at the Worcester storebreaking. The Appellant stated that he was not aware of what was in the boot of the car. This was proved to be a false statement.

An appeal against a conviction for housebreaking in respect

of the Worcester incident was set aside by the Appellate Division and there was substituted a conviction for receiving the goods found in the boot of the car. The sentence was reduced from three years imprisonment to a fine of R500.00. The basis of the judgment was that the possession by the Appellant of three of the stolen articles was not sufficiently recent to justify the conviction that he was one of the thieves.

I think that it was incorrect to convict the Appellant in the instant case of breaking into the house of Mr. Solomon. One week had passed before he was found to be in possession of certain of the articles stolen during the housebreaking. There was no evidence going to show that the Appellant was in the area of the house of Mr. Solomon at the time of the burglary or that he was associated with any person or group of persons who were admittedly involved in breaking into the house or any other circumstance pointing to a connection with the offence. The goods were of a kind which could easily have passed from hand to hand in a short time after being stolen. The fact of recent possession and a false explanation is not in this case sufficient to establish beyond a reasonable doubt that the Appellant was involved in the housebreaking.

On the other hand there would seem to be no doubt that a conviction for receiving stolen property knowing it to be stolen can be sustained. The Appellant was a panel beater who would not ordinarily be in possession of valuable gold jewellery. He disposed of three gold chains at prices far below their true value which is ordinarily conclusive evidence of the fact that the seller knew that what he was selling was stolen property and could not be disposed of openly.

G. BIZOS

for G. BIZOS

I agree

G. BIZOS
Judge of Appeal

GIVEN AT LOBATSE THIS 4th day of July, 1991.