

OSWARD SINKALA v THE PEOPLE (1970) ZR 64 (CA)

COURT OF APPEAL

DOYLE CJ, PICKETT JA AND MAGNUS J

25th FEBRUARY 1970

Appeal No. 79 of 1969 20

Flynote

Criminal law and procedure - Conviction for being in possession of goods suspected to be stolen - Evidence showing goods actually stolen - Whether conviction proper - Penal Code, s. 287.

Headnote

The appellant was convicted under s. 287 of the Penal Code for 25 being in possession of goods suspected to have been stolen. The evidence adduced showed that the goods had actually been stolen. The court had acquitted him of the offences of theft and burglary. He appealed.

Held:

- (i) Since the goods were known to have been stolen it was wrong 30 for the magistrate to convict the appellant under s. 287 which only deals with goods which are not stolen but suspected to be stolen.
- (ii) The offence could not be substituted for theft since the appellant had already been acquitted of it 35.
- (iii) Appeal allowed.

Legislation referred to:

Penal Code, 1965 (Cap. 6), s. 287.

Judgment

Doyle CJ: delivered the judgment of the court.

The appellant is perhaps an extremely fortunate man. On extremely 40 clear evidence he was acquitted of burglary and theft, and the learned magistrate convicted him of an offence under s. 287 of the Penal Code. That section applies to goods which are not stolen but which are in the category of goods only suspected to be stolen. In this case the goods

1970 ZR p65

DOYLE CJ

were known to have been stolen. This court and many others have said that s. 287 is not an easy way of getting convictions for theft. The appellant is very lucky that we can do nothing about it. He has already been acquitted of theft so we cannot substitute this offence. It is equally impossible to substitute receiving when we have no reason to believe that offence 5 was committed. The appeal must be allowed.

Appeal allowed