

SOUTH AFRICA / JUDGMENT

S v Chokoe (A405/2012) [2012] ZAGPPHC 95 (7 June 2012)

[2012] ZAGPPHC 95

COURT

North Gauteng High Court, Pretoria

BEFORE

R G Tolmay, T J Raulinga

CASE / FILE NUMBER

A405/2012

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IN

THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL

PROVINCIAL DIVISION)

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HIGH

COURT REF. NO.: 479

REVIEW

CASE NO.: 7/12

CASE

NUMBER: SH 456/10

case

Number:A405/2012

DATE:07/06/2012

In

the matter between:

THE

STATE

Vs

BONGANI

JOSEPH CHOKOE

REVIEW

JUDGMENT

TOLMAY, J:

- [1] This matter came before me by way of a special review in terms of sec 304(4) of Act 51 of 1977, (the Act).
- [2] The accused appeared in the Benoni Regional Court on a charge of housebreaking with the intent to steal and theft. On 28 February 2012 the accused was found guilty of contravening sec 36(1) of Act 62 of 1955 (possession of stolen property). The accused was sentenced on the same day to 18 months imprisonment wholly suspended for a period of three years on condition that he "is not convicted of the same offence during the period of suspension".
- [3] The following transpired from a perusal of the record:
- i. According to the charge sheet and the transcription, the only charge against the accused was housebreaking with the intent to steal and theft. After the charge was put to the accused, accused was warned of the competent verdicts that applied to the matter in terms of sec 36 and 37 of the Act.
 - ii. The face of the charge sheet reflects a plea of not guilty to housebreaking but guilty to possession of suspected stolen goods. The judgment reflects that the accused was found guilty of possession of stolen goods.
 - iii. There is no indication that any alternative count was put to the accused. The only reference made by the prosecutor was to the aforementioned competent verdicts.
 - iv. The record indicates that the legal representative for the accused indicated that the accused intended to make admissions which are then followed by the version of the accused, seemingly being the admissions. The prosecutor then placed on record that the admissions be recorded in terms of sec 220 of the Act. This is immediately followed by the judgment of the learned magistrate,
 - v. There is no indication that the formal admissions were noted in terms of sec 220 by the court or any indications of as to whether sec 115(2) of the Act was followed or whether sec 112 was applied.
- [4] If the content of the admissions made by the accused is evaluated it transpired that the elements of the crime of possession of stolen goods were not admitted, in that:
- I. The accused did not admit that he had to open the door in order to enter into the house. If the door was open and the accused entered the house and took aside it items he could only have been found guilty of theft.

ii. It is also clear from the plea explanation that the accused did not have the intention to permanently deprive the complainant of his ownership of the said items as he stated that b* wanted to keep as security for an amount of R500-00 owned to him by one Eric.

[5] In the light of the aforesaid the learned acting senior magistrate is of the opinion that the judgment should be set aside and referred back to the court to start de novo. An opinion provided by the DPP supports this view. I am also of the view that the conviction and sentence should be set aside.

[6] In the light of the aforesaid I am of the view that the conviction and sentence are not in accordance with the law and should be set aside.

[7] Consequently I make the following order:

7.1 The conviction and sentence are set aside;

7.2 The matter is referred back to the Magistrate's Court Benoni for a plea of not guilty to be entered and the matter to start de novo.

R G TOLMAY

JUDGE OF THE HIGH COURT

I AGREE:

T J RAULINGA

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Prepared on 11 October 2026 · Esheria