

UGANDA / JUDGMENT

Rex v Abdalla (Confirmation Case No. 868 of 1941) [1942] EACA 81 (1 January 1942)

[1942] EACA 81

COURT

East African Court of Appeal

BEFORE

Bartley J, Sheridan CJ

CASE / FILE NUMBER

Confirmation Case No. 868 of 1941

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CRIMINAL CONFIRMATION

BEFORE SIR JOSEPH SHERIDAN, C. J., AND BARTLEY, J.

REX. Prosecutor

UMARI BIN ABDALLA, Accused (No. 2)

Confirmation Case No. 868 of 1941

Criminal Law—Evidence of accomplice—Exclusive possession of stolen property -Practice in joint trial on one accused pleading guilty and being called as witness against co-defendant.

In a joint trial on charges of burglary and theft one defendant after pleading guilty but before sentence was passed upon him was called as a witness against his co-defendant. The accomplice made contradictory statements as to his living with his co-defendant in whose house a pair of braces and a fountain pen, part of the stolen property, were found.

Held \$(17-1-42)\$.—(1) That the trial magistrate had not directed his attention to the question as to whether there was any evidence except that of the accomplice as to whether the two stolen articles were found in the co-defendant's exclusive possession.

- (2) That the finding of a pair of braces and a fountain pen in the room in which the confessed thief lived should not tell against the co-defendant without other non-tainted evidence pointing to his guilt.
- (3) That it is advisable for sentence to be passed upon a defendant who pleads guilty before calling him as a witness against a co-defendant.

Accused absent. unrepresented.

Spurling, Crown Counsel, for the Crown.

ORDER.—Quite apart from the fact that the evidence does not disclose any breaking into the dwelling house and that therefore the conviction for burglary could not stand we are of the opinion for other reasons that neither the conviction for burglary nor theft can stand.

The learned Magistrate has not directed his attention to the question as to whether there was any evidence except that of the accomplice as to whether the two stolen articles which were found in the second accused's room were found in his exclusive possession. The accomplice had told Chief Sub-Inspector Abdulla Said that he was living with the second accused when he brought the Chief Sub-Inspector to the second accused's room on the occasion when the stolen, exhibits were found. If that statement to the police officer were true the finding of a pair of braces and a fountain pen in the room in which the confessed thief lived should not tell against the second accused without other non-tainted evidence pointing to his guilt. The accomplice in giving evidence against the second accused denied that he lived with him but the second accused cross-examined on this point. The learned Magistrate in his judgment has not referred to these contradictory statements by the accomplice which we consider to be of importance. He did find that the room in which the exhibits were found was the accused's room adding, "Indeed he admits it to be his". That admission is not an admission that he lived alone in that room, indeed from the second accused's cross-examination of Bakari it is clear that he alleged that Bakari was living with him.

One other point calls for comment. When Bakari pleaded guilty it would have been advisable for the learned Magistrate to have sentenced him before allowing the prosecution to call him as a Crown witness against this co-defendant. To quote Archbold, 30th Edition, page 469, "it is generally the practice to sentence such defendant before proceeding with the trial of his co-defendant".

For the reasons given we set aside the convictions and sentences on the second accused acquitting him and directing that he be released forthwith.

$\$ \mathbf{v} \$$

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