

VIMBAI MACHACHE
and
MODESTA MATAVIRE
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE & BERE JJ
HARARE, 20 January 2015

Concession in terms of section 35 of the High Court Act, [Cap 7:06]

L Chiperesa, for the appellants
R Chikosha, for the respondent

HUNGWE J: The appellants were convicted of theft of a deep freezer, a stove and a microwave oven. They were sentenced to a wholly suspended sentence of 5 months. They now appeal against the conviction.

The facts upon which the convictions were founded were as follows. Complainant and her estranged husband were based in South Africa at some point. They would send money and various items of property which she would have purchased as at the time they did not have a home in Zimbabwe. They stayed with his parents. The items subject of the trial were received allegedly by the appellants. Sometime when she was pregnant, they came back home. They complainant noticed that only the stove was in the house. She did not report theft of these items until she was evicted from her erstwhile husband's parents' home. When she raised the matter of the whereabouts of the other items, she was advised that since her husband owed the appellants money, the items had been sold to offset the debts. She demanded her property and filed a police report for theft. When police visited the home, she was denied entry. Only the police officer entered and reported seeing the stove.

There are several disquieting features in the matter which cast serious doubt on the propriety of the conviction which the appellant has correctly noted. As correctly observed by the learned trial magistrate, this was a single witness case for which corroboration was necessary. The only form of corroboration came from the complainant's sister who could not say more than that she was relying on what the complainant herself told her regarding the

delivery of the disputed property. In effect this evidence did not reach the threshold of corroboration since it was hearsay in nature and therefore carried little probative value. Of importance is the fact that these allegations of theft were raised against in-laws after they in-laws had sought complainant's eviction from their residence.

Corroboration refers to independent evidence of some material fact which implicates (in the sense that it involves) the accused in the offence charged and tends to confirm that persons' guilt. The essence of corroborative evidence is that it confirms, or supports, or strengthens the complainant's evidence in the sense that it renders it more probable: *R v Baskerville* (1910) 2 KB 658 and *Doney v The Queen* (1990) 171 CLR 207 at 211.

It may involve direct or circumstantial evidence (Doney). It is not necessary that standing alone, it should establish the guilt of the accused beyond reasonable doubt, otherwise there would be no need for the witness whose evidence it corroborates.

It must tend to confirm the complainant's evidence in some particular material, although it is not necessary that it supports the whole of the complainant's account.

Corroboration could have been secured from either the proof of customs clearance in respect of the items allegedly sent from South Africa and allegedly received by the appellants. Proof of purchase could have provided the necessary corroboration of the fact of ownership from which a probable inference that complainant owned and therefore held the same for herself since by their nature these were subject to customs duty. There is no explanation why these documents were not available, casting doubt regarding whether the items were really acquired and sent to the appellants to be held on her behalf. It was, in my view, necessary for the State to prove receipt of the items by the appellants on behalf of the complainant before a conviction for theft could reasonably have followed.

In light of the above I find that the concession by the State that the conviction was not safe to have been proper. As such that conviction is set aside and the sentence quashed. Consequently, the verdict of the lower court is altered to read as follows:

Both accused are found not guilty and acquitted.”

BERE J agrees _____