

NONDO v DIRECTOR OF PUBLIC PROSECUTIONS (1968) ZR 83 (CA)

COURT OF APPEAL

DOYLE JA PICKETT AND MAGNUS J J

13th AUGUST 1968

Flynote and Headnote

[1] Criminal law - Arson - Accidental fire, necessity to disprove.

When the prosecution fails to put forward eye - witness proof to the effect that the accused set the fire in question, it must disprove "any possibility" of accidental fire.

Appellant in person.

Malama, State Advocate, for the respondent.

Judgment

Doyle JA: In this case the appellant was convicted of arson. The evidence against him was that he had quarrelled with his father - in - law. The father - in - law had returned the appellant's wife's dowry and told him that the marriage was ended. Because of that the appellant got angry and threatened to burn down his father - in - law's house. That evening the father - in - law's house did in fact catch fire, and the evidence which was accepted was that the appellant was seen standing near the house some twenty paces away and, when a shout was raised, he ran away. All of this was strong suspicion that he had burned the house down, and if it had been proved beyond reasonable doubt that the house had been burned other than by natural agency, it would have been perfectly in order for the court to draw the conclusion that the appellant had burnt it. It was, however, upon the State to prove that the house had been burned by an intentional and malicious act. When one actually sees a person set fire to a house it is clear that this can be proved by the act itself. When, however, one merely sees a person standing near a burning house, one has to disprove any possibility of accidental fire. Normally this is done by calling persons in the house to give evidence that they put out their cooking fires, that there were not any grass fires from which sparks might come, etc. No such evidence was called in this case, so that the State never overcame the first hurdle to say that this fire was arson. In consequence they failed to prove that the appellant committed the crime. We must allow the appeal and quash the conviction and sentence.

Appeal allowed.