

SOLO v THE PEOPLE (1967) ZR 99 (HC)

HIGH COURT

PICKETT J

4th AUGUST 1967

Flynote and Headnote

[1] Evidence - Confessions - Procedure for establishing Voluntariness.

A confession whose voluntariness has not been proved in "a trial within a trial" is inadmissible as evidence.

[2] Evidence - Accomplice Testimony - Corroboration - Warning necessary.

Where an accomplice witness gives uncorroborated evidence for the prosecution, the trial judge should warn himself of the danger of convicting the appellant on the strength of such evidence, which can easily be motivated by the accomplice's self-interest.

[3] Criminal procedure - Accomplice testimony - Duty of trial judge to warn himself.

See [2] above.

Case cited:

- (1) *R v Prater* [1960] 2 QB 464; [1960] 1 All ER 298; 44 Cr. App. R 83

Statute construed:

Penal Code (1965, Cap. 6), s. 243.

Appellant in person.

Zulu, State Advocate, for the respondent

Judgment

Pickett J: This appellant appeared before the learned senior resident magistrate, Lusaka, on the 9th January, 1967, and subsequent days upon a charge of theft contrary to section 243 of the Penal Code, Cap. 6, along with another accused person, Joseph Mwangala, and the particulars of the charge allege that on the 30th April, 1967, at Lusaka, they stole a motor vehicle, registration number EL 2974, one car record player, one car tape-recorder, one blue book, one insurance book, one car radio, one tool-box and a camera, together valued at £958, the property of Partson Molife. At his trial the appellant pleaded not guilty to the charge, but he was convicted and on the 20th June, 1967, he was sentenced to eighteen months' imprisonment with hard labour. From his said conviction and sentence he now appeals to this High Court.

After a careful examination of the record in this case, I am satisfied that this conviction and sentence cannot be allowed to stand. In the first place, whenever the prosecution seeks to put in evidence a confession alleged to have been made by the accused party, it is the duty of the magistrate to find out first of all whether or not the accused objects to such confession being admitted in evidence and, if so, on what grounds. These are usually allegations to the effect that the confession was not a free and voluntary one, the accused alleging maybe that he was beaten and so on. [1] Then it is the duty of the magistrate to hold what has come to be known as "a trial within a trial" before allowing the confession or statement to be put in evidence. This trial within a trial consists first of all of allowing the witness seeking to produce the statement to give evidence regarding the circumstances under which it was taken, then permitting the accused to cross-examine this witness, and when all the prosecution witnesses regarding the statement have been called, then permitting the accused, if he so desires, to give evidence on oath as to the manner in which he says that statement was taken, and also he must be given the opportunity to call witnesses regarding the taking of the statement if he so desires. When all these things have been done, the magistrate will then give a formal ruling on the issue. Nothing like this happened in the present case, and accordingly, without such a trial

within a trial, the statements should not have been admitted. In my opinion, this defect is of such a serious nature that it would be most unsafe to allow the conviction to stand.

[2] [3] In addition, this court considers that P.W.2 was a thoroughly unsatisfactory witness and, at the very least, might well have had a purpose of his own to serve in putting the blame upon the appellant and his co - accused, thus requiring the magistrate to give himself the formal warning regarding the acceptance of the uncorroborated evidence of accomplices. See *R v Prater* [1]. Indeed, the learned magistrate does appear to have had some suspicion regarding this witness, since he cross - examined him at length with a view, as he says in his judgment, to satisfy himself that he was a truthful witness. In my opinion, at the very least, the magistrate should have had serious doubts about accepting the evidence of P.W.2, particularly in view of his failure to reply to the magistrate's question as to why he did not report the matter to the police when he entertained a suspicion in his mind that the property might have been stolen. The learned State Advocate has informed me that he does not support this conviction nor indeed can it be supported. In these circumstances, therefore, I shall quash the finding and sentence imposed and discharge the appellant.

As identical circumstances prevail in the case of the first accused, Joseph Mwangala, I shall exercise my powers of revision, and quash the conviction and sentence imposed in his case also.

Conviction quashed.