

THE PEOPLE v LACKSON SAKALA (1981) Z.R. 316 (H.C.)

HIGH COURT
CHIRWA,
29TH
(HPR/32/1982)

JANUARY,

1982

J.

Flynote

Criminal law and procedure - Firearms - Failing to secure a firearm - Meaning of - Firearms Act, Cap. 111, s. 38 (1), (3).

Criminal law and procedure - Firearms - Lending out a firearm to unauthorised person - Whether constitutes an offence under s. 38 (1), (3) of the Firearms Act, Cap. 111.

Headnote

The accused was charged with the offence of failing to secure a firearm and ammunition, contrary to s. 38 (1) of the Firearms Act, Cap. 111. He was a holder of a firearm, a rifle and had six rounds of ammunition in his possession. He lent the said firearm and ammunition to one MrChisololo who was not a holder of firearm and ammunition certificates. He pleaded guilty and was sentenced to a fine of K250.00 in default, nine months simple imprisonment. The case was sent to the High Court to review the sentence on the question whether the lending of a gun to an unlicensed person amounted to an offence envisaged by the legislature in s.38 (1), (3) of the Firearms Act.

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Held:

- (i) Failing to secure a firearm means leaving a firearm in such a place that it is likely to be lost or come into possession of a person not lawfully entitled to without the knowledge of the owner of the gun.
- (ii) The offence under s. 38 (1), (3) involves an element of negligence on the part of the firearm holder and lending a gun to unlicensed person does not amount to the negligence required under s. 38 (1), (3) of the Firearms Act.

Case referred to:

(1) R. v Manzete (1963) R. & N. 399.

Legislation referred to:

Firearms Act, Cap. 111, s. 38 (1), (3)

Judgment

CHIRWA, J.: This case was sent to the High Court to review the sentence of a fine of K250.00, in default, nine months simple imprisonment for the offence of failing to secure a firearm and ammunition, contrary to s. 38 (1), (3) of the Firearms Act, Cap. 111.

The particulars of the offence against the accused Lackson Sakala are that, he on a date unknown but between the 3rd November, and 7th December, 1981, at Kabwe in the Kabwe District of the

Central Province of the Republic of Zambia, being a holder of a firearm, namely rifle .22 serial number 18351 and six rounds of ammunition, and while he is required by law to keep the firearm and ammunition in his possession securely at all times, did fail to keep the said firearm and ammunition in safe custody. He pleaded guilty and although there is no statement of facts attached to the record, he accepted the facts and he was found guilty and sentenced to a fine of K250.00, in default nine months simple imprisonment. The accused came before the subordinate court by way of summons and the allegation in the summons are that the accused lent his firearm and ammunition to one Mr Chisolo who was not a holder of firearm and ammunition certificates. There was no amendment of these summons at the time of plea and therefore assume that the facts accepted by the accused when read to him by the prosecutor allege that he lent his gun to Mr Chisolo.

The question is: does the lending of a gun to unlicensed person amount to an offence envisaged by the legislature in s. 38 (1), (3) of the Firearms Act? In my opinion, the answer is no. Failing to secure a firearm, in my view, means, leaving a firearm in such a place that it is likely to be lost or stolen or come into possession of a person not lawfully entitled to without the knowledge of the owner of the gun. For this interpretation, I think I get support from the short judgment of Hathorn, J., in the case of *R. v Manzete* (1). In this case the accused kept his gun in grain hut made of pole and dagga with a doorway closed by a plank door looked by means of a hasp and staple and a padlock. At page 400 Hathorn, J., had this to say:

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"On the evidence in the case it seems clear to me that the accused was keeping his gun in a place where it was reasonably *secure against the risk of falling into possession of an unauthorised person*. The place does not seem to me to be less vulnerable to an attack with an axe or a crowbar than some of the places described in the definition (of a secure place.) This being so, he did not commit an offence." (underlining my own)

Coming to the present case, although Mr Chisolo was not in lawful possession of the firearm in the sense that he had no licence, the unlawfulness of Mr Chisolo's possession did not create an offence against the accused under s. 38 (1), (3) of the Firearms Act. The accused authorised Mr Chisolo to take the gun and that act does not create an offence under s. 38 (1), (3) of the Act. Offence under s. 38 (1), (3) involves an element of negligence on the part of the firearm holder and lending a gun to unlicensed person does not amount to the negligence required under this section. I hold therefore that the accused did not commit an offence under s. 38 (1), (3) of the Firearms Act, I therefore quash the conviction and set aside the sentence. The nearest offence that comes to my mind is that of aiding and abetting Mr Chisolo to commit an offence. Perhaps the State should amend The Act, making it unlawful to lend a Firearm to someone unlicensed.

As the accused has already paid the title, I order that it be refunded to him immediately.
Conviction quashed and sentence set aside
