

CHAVANI KUMBULA v THE STATE

SUPREME COURT OF ZIMBABWE,
HARARE, FEBRUARY 11, 1985.

Before: McNALLY JA, in Chambers in terms of Rule 31(7) of the Supreme Court of Zimbabwe Rules,

McNALLY, JA; The applicant applied for leave to prosecute his appeal against conviction in person.

He was convicted of stock theft on 9 November 1984,

On considering the papers I formed the view that there was not sufficient evidence to support the conviction, I therefore referred the matter to the Attorney-General for his consideration.

I have now had notice from the Attorney-General that he does not support the conviction. The reasons for his inability to support the conviction are as follows:

The applicant was one of four persons convicted.
He was the first accused. The second accused was a young woman. The third and fourth accused were young men.

It was common cause between accused 2, 3 & 4 that she (accused 2) had brought the cattle to the place where the two young men lived. They (accused 3 & 4) know nothing of any part that accused might have played in the theft.
She did not mention the name of accused 1 to them.

Accused 1 lived elsewhere,.

The only evidence against accused 1 was that given by accused 2, a self-confessed accomplice. She said that accused 1 had instigated the crime and that they had gone together to commit it. There was not a shred of evidence to support her allegations against accused 1. Indeed the trackers who followed the cattle to the home of accused, 3 & 4 spoke of three sets of footprints, whereas on her evidence there should have been only two.

It is trite law that accomplice evidence must be I corroborated. The so called "cautionary rule" is to be applied, over and above the provisions of section 254 of the Criminal Procedure & Evidence Act. See S v Mupfudza 1982 (1) ZLR 271 and S v Mubaiwa 1980 ZLR 477. In this case there was every reason to be aware of the danger that accused 2 might be falsely incriminating accused 1.

Her husband worked for the complainant. She might have been protecting him, or someone else. Moreover, as has been pointed out, the real evidence shows that three people stole the cattle, yet she spoke of only two.

The applicant has at all times protested his innocence.

In the light of the Attorney-General's very proper attitude, and in terms of the provisions of Section 10(3) of the Supreme Court of Zimbabwe Act, the appeal is allowed, the conviction is quashed, and the sentence is set aside. Arrangement have been made for the release of the applicant.