

R. v. D. G. STYLES.

CRIMINAL APPEAL CASE No. 47 OF 1938.

Theft of motor car—con. Penal Code section 243—two persons charged together—both concerned in preparations for effecting the theft, but respondent not actually or constructively present when motor car taken by his associate—respondent acquitted by Subordinate Court—appeal by way of case stated—respondent held to have been accessory before the fact and Subordinate Court directed to convict.

The facts appear from the judgment hereunder.

Section 21 of the Penal Code details parties who are deemed to have taken part in the commission of an offence. In the present case the respondent Styles would appear to have been an accessory before the fact and his conduct brought him within the provisions of section 21 (b) of the Penal Code.

Francis, C.J.: This is a case stated by the Magistrate, Livingstone, on the application of the police.

The respondent Styles was charged with one Christie with the theft of a motor car. To this charge a plea of "not guilty" was entered. The facts found by the Magistrate were briefly that the respondent conspired with Christie to steal a car and on the evening of the 18th November, Christie and the respondent then being together, examined several cars outside the cinema house and decided upon one as being suitable. They returned together to Toc H house, packed a suitcase and made Bulawayo number plates.

Christie then returned to the cinema alone, drove the car in question away and picked up the respondent who was awaiting him further down the road, having the suitcase and number plates. The two men then proceeded in the car to Bulawayo, where they were arrested.

Upon these facts the Court found that the respondent was not guilty as a principal in the theft of the car and he was acquitted.

The Magistrate's reasoning was that the respondent was neither present at the commission of the offence, i.e., the actual removal of the car from the parking place, nor was he near enough at the moment of removal to give assistance should occasion have arisen.

This view of the respondent's complicity is unwarrantably narrow.

The act of combining privily with Christie in the theft of a car, together with the part played in approving the selection of the particular car, was an abetment by the respondent of the theft of that car; moreover the help he gave in the making of false number plates and in bringing them to the car was an assistance in the theft.

Having regard to these activities, the presence of the respondent in the stolen car as it drove away, constituted him quite conclusively an aider and abettor.

In my view the Magistrate has misinterpreted the law, and it is directed that the case shall be returned to the Subordinate Court with the following instruction:

“The finding of the Subordinate Court is hereby reversed, and it is ordered that the respondent be brought before the said Court and a finding of ‘guilty’ of the charge preferred against him be entered.”