

THE REPUBLIC OF UGANDA

UGANDA v. OKECHO

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(Crim. Rev. No. 203 of 1976)

JUDGEMENT

Criminal Law - accused charged with obtaining money by false pretence c/s 289 of Penal Code - Accused had been given money by complainant to buy cigarette but he did not buy them nor return the money - whether there was any obtaining by false pretences.

Criminal Procedure - accused charged with obtaining money by false pretence c/s 289 of Penal Code - Facts revealed theft - accused can be convicted of theft though not charged with it. s.151 M.C.A.. 1970.

The accused was convicted of obtaining money by a false pretence c/s 289 of the Penal Code Act.

He was sentenced to imprisonment for 12 months and ordered to refund the money to the complainant.

The complainant had given money to the accused to buy cigarettes for him but he never received the cigarettes. The accused stated that the money had been stolen from him when he fell into drunken sleep. The trial magistrate did not believe the accused's story and so convicted him as charged.

On Revision:

Held: 1. The accused did not obtain money by false pretence because the complainant handed the money to him of his own free will and instructed or asked the accused to buy cigarettes for him. As the accused did not initiate the transaction, there was no false pretence and therefore the wrong offence was charged.

2. Under s.151 of the M.C.A., 1970, "when a person is charged with obtaining anything capable of being stolen by false pretences with intent to defraud, and it is proved that he stole the thing, he may be convicted of the offence of stealing although he was not charged with it."

3. The facts of the instant case revealed theft by conversion as defined by s.245(3)(b) of the Penal Code Act, and therefore the accused should have been convicted of that offence.

Conviction of obtaining money by a

false pretence c/s 289 of Penal  
Code quashed and substituted for it  
a conviction of theft c/s 252 of  
Penal Code.

Dated this 29<sup>th</sup> of December 1976

ALLEN ,J

Highcourt