

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

APPELLATE

DIVISION).
AFDELING).

Original Exhibits ✓

APPEAL IN CRIMINAL CASE.
APPEL IN STRAFSAAK.

FREDDIE

FARRAH

Appellant.

versus/teen

THE

QUEEN

Respondent.

(n. Said)
Appellant's Attorney
Prokureur van Appellant

Respondent's Attorney
Prokureur van Respondent

Appellant's Advocate N.C. Nicholas
Advokaat van Appellant J. Stevo

Respondent's Advocate M. G. Tucker
Advokaat van Respondent

(Leave - WLD)
Set down for hearing on:

Op die rol geplaas vir verhoor op:

Monday, 16th November, 1959.

14 5 7

(B)

bonam: Bayes, Malan & Ogilvie Thompson.

Appeal dismissed.

BB Stevo

MONDAY, 27th APRIL, 1959.

On resuming at 10 a.m.

JUDGMENT

CLAASSEN, J.: In this case the three accused were charged with the crime of robbery. The allegation in the indictment was to the effect that on or about the 13th November, 1958, and at or near Johannesburg, in the district of Johannesburg, the accused did wrongfully and unlawfully assault David Sacks and did then and
10 there with force and violence take from his person and out of his possession £150 cash, one fountain pen, two keys, four cheques, one suit, six pairs^{of} pyjamas, ten bottles whisky, four pairs^{of} shoes, five towels, eight bedsheets, twelve shirts, thirty-six handkerchiefs and one box soap, his property or in his lawful possession, and did rob him of the same.

During the course of the trial accused No. 3 was found not guilty and discharged. There are only left accused Nos. 1 and 2.

20 The result of our deliberations is that accused No. 1 is found guilty of the crime as charged, and with regard to accused No. 2 we have found, by a majority, that he is to be convicted of the crime set out in section 37(1) of Act No. 62 of 1955.

I deal with some of the evidence and some of the reasons why we have come to these conclusions. The evidence of the complainant, David Sacks, is to the effect that he is a bookmaker by occupation, that he resides at 121, Manners Mansions, on the twelfth floor,
30 in Jeppe and Joubert Streets, Johannesburg; that on

the.....

the evening of the 13th November, 1958, he arrived at his flat at about 10 o'clock. He entered the flat and first went through the entrance hall, switched on the light there, and then into the main sitting room, where he also switched on a light. He was about half-way through the sitting room when the lights were switched off behind him and he was attacked from behind.

10 He said that he got a glimpse of his attackers and they were Europeans; he saw only the figureheads, and he did not see them walk or see them in any such way as to identify them. They did not, from what he could see, look like familiar people to him. These people got hold of him from behind. They threw something over his eyes and put something over his mouth. They used these words to him: "If you want to remain alive keep quiet; if you shout we will shoot you". He did not see any weapons; all this happened in the dark. His
20 hands were then tied behind his back, and his legs were tied together. He was pushed on to his bed and tied to the mattress. He could, of course, not see. He said that someone sat on the bed, and the whole place was ransacked. This lasted for about half an hour, and ultimately he heard the front door closing. That was the entrance door. He then realised that the people had left and he started to shout, but there was no response to his shouting.

30 He also said that while he was being attacked these people went through all his pockets. His keys were removed, and he heard doors being opened and shut, and his.....

his safe was also apparently opened during the course of the evening. He tried to free himself, and after some time he managed to free his left hand and then was able to free himself altogether. He then switched on a light. He noticed a pool of blood on the carpet where he had been gagged, and also a pool of blood on the mattress. He then telephoned the police and a doctor.

He said that he had an amount of cash in his pockets, and this money was removed by the robbers.

10 The three people must have gained entrance through the balcony door, or only one could have gained entrance that way and then could have opened the flat and the others could have gained entrance through the front door.

The complainant, Mr. Sacks, had only one injury on his head, from where blood issued, but he was not aware that he had received this injury. He did not feel a blow. It was only after he managed to free himself that he observed that he was bleeding from his
20 head. He was attended by a doctor and this wound was stitched.

A sum of £150 in cash was taken from Mr. Sacks' back hip pocket, and various cheques were taken from the front fob pocket of his trousers. One of these cheques figured as an exhibit before this Court. It was Exhibit "B", a cheque made out by one Mr. Jankelsohn in favour of Mr. Solomon for £120. This amount was owing by Solomon to Sacks, and this cheque was handed over to Sacks. He had this cheque in his pocket on the
30 evening in question. That evening Sacks also discovered
that.....

that he had lost a fountain pen, two keys, four cheques, one suit, six pairs of pyjamas, ten bottles of whisky, four pairs of shoes, five towels, eight bedsheets, twelve shirts, thirty-six handkerchiefs - these were all, incidentally, new handkerchiefs of the Pyramid variety - and one box of soap. It was a new box of soap which Sacks said he had bought a day or two before this incident. That is what he missed that evening.

10 Subsequently it was discovered, when the police opened the safe, that there were also missing a number of post-dated cheques and ten golden sovereigns. The total value of the goods taken from him amounted to about £500.

There was before the Court Exhibit 1, which consisted of three bedsheets, four towels, a box of soap, a new shirt, still in its original wrappings, and 2½ dozen new handkerchiefs of the Pyramid variety. The complainant claimed all these items in Exhibit 1 as goods taken from his flat that night. In the course of cross-examination he had to admit, with regard to the
20 soap, that anybody could have bought such a box of soap from a chemist's shop. The soap is an imported variety, apparently a perfumed type, and expensive. The shirt was a brand-new shirt, also of good quality and apparently of an expensive kind. Sacks had to admit, as I said, that the soap could have been bought by anybody in a chemist's shop and, similarly, anyone could have bought the shirt, and the same applies to the handkerchiefs.

All the items in Exhibit 1 were found by the police in the flat occupied by accused No. 2. He occupies
30 that flat with his wife. Now, it is clear that these goods.....

5
goods were in the flat of accused No. 2 the next morning, that is the 14th November, the day following the robbery. I must say this, that with regard to the sheets and the towels, these bore a laundry mark "S.412". Mr. Sacks said that that was his laundry mark, allocated to him by the Advance Laundries. An employee of that laundry testified in this Court to the effect that they have a client by the name of Sacks and that his laundry mark was "S.412". It is, of course, possible that
10 another laundry may have a similar laundry mark for a person whose name also begins with the letter "S".

With regard to these goods found in the flat of accused No. 2, if one were to take each one of these items individually it could, of course, be argued with force that there is no proper identification ^{to the effect} that each one of these items was taken from the flat of the complainant Sacks. But with all these items taken together it would be far too great a coincidence that all these goods, similar to the ones taken from Sacks' flat, could have found their way individually to the
20 flat of accused No. 2.

We have not the slightest doubt, particularly taking into consideration the laundry mark of Sacks, that all these goods were taken from the flat of Mr. Sacks.

There was further found, in the bedroom at the Grand National Hotel which was occupied by accused No. 1 on the night in question, a bedsheet which is Exhibit 3. That was also a bedsheet identified by Sacks as being
30 his, and having been taken from his flat on the night in question.

The.....

The police were informed about these cheques - when I say "these cheques" I refer particularly to the four cheques taken from the pocket of Sacks - and the next morning steps were taken to inform the parties from whom these cheques came and also the banks concerned.

With regard to this one cheque, Exhibit "B", for the sum of £120, the bank concerned was warned in advance before business hours on the 14th November.

10 Mr. Sacks, in cross-examination, admitted that he knew accused No. 1, that he had known him for a long time, and that he was aware of certain physical defects of accused No. 1. He is a man who walks as a cripple.

His one leg is considerably shorter than the other. The object of the cross-examination was to establish that if accused No. 1 had been at the flat that night Mr. Sacks should have recognised him. But Mr. Sacks said that the ^{assault} took place in the dark. The whole incident, before he was gagged and blindfolded, only
20 took about five to ten seconds, and he said that he could not identify anybody. It was dark and he saw only figureheads, as he put it. He was attacked from behind, and before that the lights had been switched off.

I should also say with regard to the new shirt in Exhibit 1, that is a size 16, and that is a size worn by Mr. Sacks. He wears size 15½ and sometimes 16.

Then there is evidence by Mr. William Ferguson, who is employed by Barclays Bank, Loveday Street. He told the Court that an attempt was made the next morning,
30 that is the 14th November, shortly after 9 o'clock by
another.....

another Crown witness, Anthony Boles, to cash at that particular bank the cheque, Exhibit "B", for £120. Mr. Boles was detained in the bank for some time until members of the police force arrived, and he was then arrested.

Now, the night before, that is the night of the 13th, accused No. 1 was gambling at a place called the Cosmos Club, and Mr. John Anthony told the Court that late that night - some time after 10 o'clock - accused
10 No. 1 spoke to him. It became clear that accused No. 1 had heard that Mr. Anthony needed £15 to release his motor-car from a certain garage. This garage belonged to a nephew of the witness Boles. Accused No. 1 said to Anthony that he could assist him with regard to the £15 because he had in his possession a cheque for £120,
Arrangements were then made that this cheque would be cashed the following morning. Accused No. 1 handed this cheque to Anthony that night and he asked him to meet him the following morning at the Grand National
20 Hotel, where accused No. 1 was staying. That morning Anthony and the witness Boles went to the hotel and went up to the bedroom of accused No. 1. It was then about 8 o'clock in the morning and accused No. 1 was still asleep. They woke him up; he asked what the time was. Anthony also gave the cheque back to accused No. 1, who then asked for a pen, and it is clear that accused No. 1 endorsed that cheque. The cheque was not endorsed the night before. The cheque was made payable to Solomon "or bearer". The evidence of Boles is also
30 to the effect that he and Anthony met the accused
on.....

on the morning in question, that is the 14th, at the hotel. They then walked into town, and Boles became agreeable to cash that cheque at Barclays Bank, Loveday Street. Boles said he had seen that cheque earlier that morning, at 2 o'clock, at the Cosmos Club in the possession of the witness Anthony. The next morning while they were walking down the street

10 accused No. 1 handed the cheque to Boles, asked him to cash it for him and told him that if he were asked about the cheque he had to say that the cheque was received from a taxi driver. Boles then asked accused No. 1 whether there was anything wrong with the cheque, and accused No. 1 said, not to be silly, that he was a friend of Boles' and that he had never before got him into trouble. Accused No. 1 indicated that he would wait at a certain cafe near the bank and that after Boles had cashed the cheque he had to come out and meet him there. Boles was then arrested, and when he came out with the police accused No. 1 was not there. Boles thereafter
20 pointed out accused No. 1 to the members of the Criminal Investigation Department at the Grand National Hotel. It is clear that accused No. 1 immediately exonerated and said the witnesses Boles and Anthony /that they had merely been instrumental in attempting to cash the cheque.

There is also the evidence of Lieutenant van den Berg. He is stationed at Marshall Square, and he investigated this case. He arrested accused No. 1 and explained the charge to him. He also gave him the usual warning. Accused No. 1 then explained to van den Berg that he
30 had picked up this cheque, Exhibit "B", the previous night.....

night on the corner of Kerk and Loveday Streets here in Johannesburg. He explained that he had found on the kerb a bundle of goods, which included a bedsheet and also certain documents, plus this particular cheque. The sheet that he had found there was identified as Exhibit 3 before this Court, which was in turn identified by Sacks as a sheet taken from his flat the night before. Van den Berg was taken to the place where it was alleged the cheque had been picked up the night before. After that van den Berg went with accused No. 1 to the bedroom of accused No. 1, room 415, in the Grand National Hotel, de Villiers Street, Johannesburg. In the bedroom this Exhibit 3 was found, and it was a clean folded sheet. Van den Berg searched the room and in a wastepaper tin he found the remains of burnt papers. On investigation it was quite clear that some of the remains of those papers must have been cheques. These remains were Exhibit 8 before the Court. According to the evidence of van den Berg he asked the accused for an explanation of these burnt papers, and van den Berg said, "Hy het net gesê hy weet nie wat se goed dit is nie".

Van den Berg then explained that he also went to the Octavia Hill Flats, Fordsburg, where accused No. 2 occupied a certain flat, and in the bathroom of this flat he found the articles contained in Exhibit 1. This visit to the flat of accused No. 2 actually took place on the 18th November. But, as I have said before, it was clear on the evidence of accused No. 2 himself that these goods were already in his flat during the forenoon.....

forenoon of the 14th November. With regard to the sheets and the towels found in the bathroom of accused No. 2, it was obvious that the ends of these articles had been folded over and sewn together so as to hide the laundry marks, "S.412". Accused No. 2 explained that these marks did not look good on these articles and he had asked his wife to cover them up in the manner described. Van den Berg asked accused No. 2 for an explanation as to his possession of these goods. The question that was put to him was this: "Wat van die handdoeke en lakens wat aan Sacks behoort en in jou besit gekry is?" The reply to that was: "Ongeveer 11 voormiddag op die 14de November, 1958, het ek dit van 'n kaffer naby die Octavia Hill Flats gekoop vir £1. Hy wou meer gehad het, maar toe stry ek hom af".

Van den Berg told the Court that accused No. 1 explained to him that the other documents that he had found with the bedsheet, apart from the cheque in question, he had thrown away in the street. Van den Berg gave him an opportunity to point out the place where these articles had been thrown away, but he could not do so. He merely said that he had thrown them away in the street but he could not say where. In cross-examination later it became clear that accused - from his own evidence - had torn up these documents and had thrown them away in one spot, somewhere on his way from the corner of Kerk and Loveday Streets to the Cosmos Club.

Accused No. 1 gave evidence. He dealt first with his physical disabilities, and then told the Court.....

11 Court that he went to the Cosmos Club on the evening of
the 13th November. This club is situated in Pritchard
Street, between Fraser Street and Simmonds Street. I
may mention at this stage that in the evidence there
were mentioned the streets Kerk Street and Pritchard
Street. I think the Court can take judicial knowledge
of these streets, because Kerk Street runs right up
to this building, and Pritchard Street is the street
immediately in front of this Court building. Pritchard
10 Street is, therefore, removed only one street from Kerk
Street and running parallel to it.

The accused also said that from the point where
he picked up the cheque to the Cosmos Club was only a
distance of about four blocks. It is, therefore, clear
that the distance from the place where he picked up
the cheque to the Cosmos Club is a comparatively short
distance. Now, the accused said that he went to this
club at 7 o'clock on the 13th and there embarked on a
gambling game, but he had lost all his money before
20 about 10 o'clock. Between 10 o'clock and 11 o'clock
that evening he had walked back to the Grand National
Hotel to his bedroom to collect some money to proceed
further with the gambling. But I also may mention that
that was the time - between 10 o'clock and 11 o'clock -
that the robbery actually took place. He said that
after he had collected the money he walked back towards
the Cosmos Club, and on the corner of Kerk Street and
Loveday Street he picked up the bedsheet, the cheque
in question and various other documents.

30 Now, the Court has found that it is highly

improbable.....

improbable that a thief, or robber, would have deposited these goods stolen from the flat of the complainant, Sacks, at a point which is practically the heart of the city - the corner of Kerk and Loveday Streets - at a place where there were lights, according to the evidence of accused No. 1. A thief, going to a point like that, depositing goods there, exposes himself and could readily be seen there. It is very highly unlikely that a thief would neatly place a bed-sheet there, in or under which there were found all these documents in question. A thief wishing to get rid of embarrassing articles would try, normally, to get rid of them in some dark place, not in a public place where he and the goods could be easily seen.

The accused went on to say that this cheque in question was not a crossed cheque, that he kept it, put it in his pocket, and he also retained the bedsheet; but the other papers he threw away as he walked along. But he said he did not know the precise spot. We find it somewhat improbable that a man would go with a sheet at that time to a club. The accused went on to say that he went on to the club, stayed there until about 3 to 4 o'clock in the morning and gambled off and on. Although he had lost all his money by 12 o'clock he managed to borrow some money from a friend and went on gambling until the early hours of the morning.

There he met Anthony, and he said that the evidence of Boles and Anthony was correct and that they had arranged to cash the cheque in question the next morning. He knew that what he was doing was wrong, but

as.....

as a gambler he had lost all his money and he was in a desperate state of mind. He admitted that he told van den Berg about the cheque having been picked up and also about the bedsheet, Exhibit 3, which he said he had picked up. He went on to say that the evidence given by van den Berg with regard to the burnt papers out of his bedroom was correct.

10 Now, it will be remembered that van den Berg had said that the accused had told him that he did not know what these things in the wastepaper tin were. The accused then went on to explain that the burnt papers were the remains of his personal papers that he had burnt there during the afternoon of the 13th November. That, of course, is different from what he had told van den Berg; and the accused also said that these documents burnt in the tin were documents not found with the bedsheet on the street corner.

20 Accused No. 1 also told the Court that he knew Mr. Sacks well, that he had known him about six or seven years, but that he did not know where Mr. Sacks lived. Of course, Mr. Sacks is a well-known person in certain circles, and his name and address could easily have been found from a telephone directory. In cross-examination accused No. 1 said that the papers found with the bedsheet included, inter alia, a document which appeared to him to be a bank statement, and also another cheque which was in fact crossed; that he tore up these documents together with the crossed cheque and threw them away, but he did not say where.

30 Now, it seems to us that an honest, innocent
man.....

man would have made every endeavour the next morning, in company with the police, to have searched very carefully along the streets which he could have taken from the point where he picked up the cheque to the club, and it would have been highly probable that at some point the remains of these torn-up papers would have been found. The accused said that he has a habit of tearing up pieces of paper and that he just tore them up as a result of that habit. He tore them up and threw them all away together in one spot. But it is very surprising that no remains of torn-up paper could be found.

He was further cross-examined about the burnt papers found in his bedroom, and he said that he remembered that there was included in those documents burnt one R/D cheque, but he knew only about this one cheque. On further cross-examination, and examination of the burnt pieces of paper contained in Exhibit 8, it was clear that there were the remains of at least three pieces of paper which could be identified as the remains of cheques. Accused could not explain where these cheques came from. He remembered only one R/D cheque, which he said had been given to him by somebody, but he could not remember the name of the person who had given him this cheque. Of the three pieces of paper that could be identified as the remains of cheques one had been drawn on the Volkskas Bank, another one on Barclays Bank and the third one on the Standard Bank, Fordsburg. On further cross-examination the accused said that he could not recollect from whom he had received these cheques.....

cheques, but he remembered only one which had been drawn on Volkskas Bank and that was the R/D cheque to which I have referred earlier. But then he also went on to say that during November he had received quite a number of cheques from other people. Some were good cheques, some were bad cheques, and he admitted that he would have had in his possession only the bad cheques. But he could not say at all from whom he had received these cheques.

10 Now, that we find highly improbable, because a person in possession of R/D cheques would most likely, in normal circumstances, remember from whom he received those cheques, and it is also likely that some of those cheques, although perhaps bad at the time, could become worthwhile cheques at some later stage. But he burnt them, and remembered only that he had burnt one. We have no doubt that these cheques came from the possession of Mr. Sacks.

20 When further questioned by one of the assessors, accused No. 1 explained with regard to the remains of these cheques and he said, "I remembered one when I was arrested and I said to van den Berg that I burnt these papers and some cheques". Now, that again is a statement contradicting the evidence of van den Berg. He was further asked about one Standard Bank cheque which was drawn on Fordsburg, and he said that he would not be able to remember the client who had given him the cheque drawn on Fordsburg.

30 He further admitted that it was light enough for him to read the papers that he had picked up on the corner.....

corner of Kerk and Loveday Streets. Now, before we can convict accused No. 1 of the charge we must be satisfied beyond reasonable doubt that his explanation was in fact false, because if there were any reasonable possibility of his explanation being true then he would be entitled to his acquittal. But we have come to the conclusion that his explanation is beyond reasonable doubt false; and just to summarise the reasons why we have come to that conclusion: We find that within an hour after the robbery accused No. 1 was in possession of Sacks' property - the sheet and the cheque. He said he picked up these things at the place which I have mentioned. There were lights there. We find it so highly improbable that the robber, or thief, would have placed these things there, in a public place, where he could have been easily observed, that we reject it in toto. We also reject completely that he tore up those documents and threw them away at some particular spot in the street, because if that were true it is in the highest degree probable that the next morning these pieces of torn paper, or some of them, would have been found somewhere along the route from the place where they were picked up to the Cosmos Club, which is a short distance. We think it is likely that by searching every possible street going to that club, some pieces of torn-up paper would have been found. Then in regard to the burnt papers in the wastepaper tin in his hotel bedroom, I have already mentioned that van den Berg said that the accused, when questioned about that, said:

"Hy het gesê hy weet nie wat se goed dit is nie", and the.....

the accused said that van den Berg's evidence was correct. The implication from that was that the accused had not burnt the papers found in the tin. But then further on in his evidence-in-chief he said that those were personal papers that he had burnt during the afternoon of the 13th November and that those were not documents that had been found with the sheet. In answer to a question by an assessor he said that he told van den Berg that he had burnt those papers together with some cheques. That was a contradiction. With regard to the papers burnt he said he could remember only one of the cheques which he had received several weeks before the date in question. He then also, incidentally, added that there might have been more cheques but that they were not his own cheques. I take that to be not cheques that had been drawn by himself, but cheques drawn by other people. He could not remember who gave him those cheques; and we find it highly unlikely, because one readily remembers the drawer of an R/D cheque. He could not recall from whom he had received those cheques. He went on to say that he had received a number of cheques during November. One I think he said came from a firm of Berman's, and also from various people in Mayfair. Some were good, some were bad. But he had remembered only burning one, and he said he would be in possession only of bad cheques. He could not remember a client who had given him a bad cheque drawn on the Standard Bank at Fordsburg.

We have it from Sacks' evidence that he lost from his pocket four cheques the night before, and several post-dated cheques from his safe. It is clear that one cheque.....

cheque definitely was in the possession of the accused. And it is very significant that amongst the remains of the burnt papers there ~~were~~ found a cheque drawn on the Standard Bank, one on Barclays Bank and one on Volkskas Bank. Therefore, at least three cheques were found in the burnt papers, and it is highly improbable that he would not have remembered the people from whom he had received the cheques.

10 He said that he left the Cosmos Club between 10 and 11. Well, that was the time the robbery took place. Within probably less than an hour of that time he was in possession of a sheet belonging to Sacks and at least one cheque, and possible more cheques. On the 13th, in the afternoon, he said he was in possession of other cheques; he could remember only one, and concerning those cheques he told a lie to the police, and gave contradictory evidence concerning the cheques.

20 We have, therefore, come to the conclusion that accused No. 1 must be found guilty of the crime of robbery as charged. He was an associate in the crime whether he was actually in the flat or not.

Now with regard to accused No. 2, one of the members of the Court was of the opinion that he should also be convicted on the main charge as framed, but the majority were of the opinion that he should be found guilty of the crime set out in section 37(1) of Act No. 62 of 1955. This section reads as follows: "Any person who in any manner, otherwise than at a public sale, acquires or receives into his possession from any other person stolen goods, other than stock or produce as
30 defined in section thirteen of the Stock Theft Act, 1923,
without....."

without having reasonable cause, proof of which shall be on such first-mentioned person, for believing at the time of such acquisition or receipt that such goods are the property of the person from whom he receives them or that such person has been duly authorized by the owner thereof to deal with or dispose of them, shall be guilty of an offence and liable on conviction to the penalties which may be imposed on a conviction of receiving stolen property knowing it to have been stolen".

10

It is conceded on behalf of accused No. 2 that all the elements of this crime were present, except one, namely that the goods in Exhibit 1 were proved to have been stolen goods. I have already indicated before that the Court had no doubt that all these goods were stolen, and stolen from the flat of Mr. Sacks. No. 2 accused in his evidence told the Court that he had bought the sheets and towels from a native on the morning of the 14th. The accused said that when this particular native offered these goods for sale to him he asked him to whom these goods belonged, and the accused said he received no reply and that the native walked away. He called him back and spoke to him again, and the accused said that he only had £1 with him and that he offered to buy these things for £1. That was agreed. He was carrying other things at the time, and he then went back to his flat to collect a suitcase. He came back, paid the native the £1 and took the goods back with him.

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With regard to the handkerchiefs found in his possession - 2½ dozen new Pyramid handkerchiefs - he gave this strange reply, he said, "I think I got them for....."

for a birthday present". He was asked about the new shirt found in his possession, and he said, "I bought clothes a month earlier - flannels - and I think I bought the shirt with them". Remarkably vague and uncertain. In cross-examination, when questioned about the native from whom he is supposed to have bought the sheets and towels, he said that he ^{had} asked the native ^{but that} about the ownership of these things / the native had given him no reply. Later on he said that he was actually suffering from asthma and he did not really take much notice of what the native was saying. But when he got home he asked his wife to cover up the laundry marks, because these laundry marks did not look good on the sheets and towels. He thought that he had bought a bargain. But it is clear that he could not have been satisfied that the native was the owner of the goods he was selling.

10

20

With regard to the box of soap, he said that he had seen the box there before, but he thought it was perfume. He did not give the box to his wife, and he thought that she might have received this as a present for her birthday, which had taken place not long before that time. Again questioned by one of the assessors he said, "I could have bought the shirt a month before". He then looked at the shirt and said, "Yes, I could have bought it. It is a good shirt and new. I have bought clothes and not worn them for a month. I buy when I have the money".

30

With regard to the handkerchiefs he said they were new Pyramid handkerchiefs and that now he was

more.....

more certain that he had received half a dozen from his brother-in-law, another dozen from his mother-in-law and another dozen from his sister.

Now, I have indicated before that the Court is satisfied that it would be too great a coincidence for all these goods, exactly similar to the goods taken from Sacks' flat, to have found their way individually to the flat of accused No. 2, and a person who has bought and received articles such as this shirt and
10 the handkerchiefs would have known definitely that he either did buy the shirt or did receive these handkerchiefs. There would have been no need for an honest person to have been vague and to have said, "I could have bought it" and "I think I received them as presents". We reject his explanation as false and we do so without any reasonable doubt.

We, therefore, find that these goods were in fact stolen goods, as required by section 37(1) of Act No. 62 of 1955, and that the accused has not discharged the
20 onus placed on him by that section. He is therefore found guilty in terms of that section.

MR. TUCKER: Both accused have records, M'Lord. Mr. Slovo addresses the Court on the question of sentence. Mr. Thomas addresses the Court on the question of sentence.

SENTENCE

CLAASSEN, J.: In sentencing accused No. 1 I take into consideration that although force was used in the robbery.....