

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRI. T. S.34/1980

In the matter of:

REX

versus

PETROS TSABEDZE & 3 OTHERS

CORAM:

C. J. M. NATHAN, C.J.

FOR CROWN:

A. F. M. THWALA

FOR DEFENCE:

B.A. DLAMINI FOR NOS. 1, 2, & 4

ACCUSED NO. 3 IN PERSON

JUDGMENT

(Delivered on 14 April, 1980)

Nathan, C.J. :

Accused Nos. 1 and 2 have each been convicted on three counts of theft of building materia from Builders Place Co. Ltd. to the total value of E16,207.91. I am informed that of this material to the value of E7973.77 has been recovered, leaving a balance of E8284.14. There is a third Accused who was charged with Nos. 1 and 2 Accused but the Crown has not proceeded further against him in the present trial owing to his having pleaded Not Guilty. Should he eventually be convicted he will be liable, apart from any sentence imposed upon him, to make restitution to Builders Place Co. Ltd. along with No.1 and No.2 Accused. The Crown withdrew the charges against a fourth Accused.

Builders Place Co. Ltd. is a parastatal organisation and the present Accused were employed by it in the respective capacities of salesman and driver. The convictions accordingly attract the provisions of King's Order-in-Council No.22/1975,

2

Sec.4 of which provides, subject to the question of extenuating circumstances which does not arise in the present case, for a minimum sentence of 6 months imprisonment in the case of a first offender and 12 months imprisonment in the case of a second offender, and further provides that no portion of such sentences shall be suspended on any conditions whatsoever.

I have in previous cases taken the view that this latter provision applies only to the minimum six or 12 month period provided for, and does not preclude me from suspending a portion of any additional sentence that the Court may impose. I shall adhere to this ruling in the present case.

I will treat the 3 Counts as one for the purposes of passing sentence. Mr. Twala raised the question whether it is proper in a case such as this to treat the three convictions as one for the purpose of passing sentence. It appears to me, however, that there can be no objection to this course being adopted where the sentence to be passed on each count would exceed the statutory minimum of six or 12 months as the case may be. The object of the Legislature, where there are 3 counts would be to ensure that the minimum operative portion of the sentence is 18 months.

This is an extremely serious case. The Accused have stolen a vast quantity of material. They are Swazis employed in a position of trust who stole from their employer; and a heavy sentence is undoubtedly called for, Mr. Dlamini who appeared for the Accused has, however, pointed out in mitigation that No.1 Accused is aged only 23 and that both he and No.2 Accused have wives and children to support. He says

3

further that the Accused will be able to make restitution to a fairly considerable extent; and he has asked me to take this into account in passing sentence. This I am prepared to do.

The sentences I am going to impose are as follows:-

1. Each of the Accused will be sentenced to 3 years imprisonment.
2. In addition each of the Accused is sentenced to 2½ years imprisonment. This portion of the sentence will in the case of each Accused be subject to suspension for 3 years on the following conditions:-
 - a) that for every sum of E300 that the Accused pays to the Registrar of this Court for transmission to Builders Place Co. Ltd., up to a maximum of F2700, 3 months of the sentence shall be suspended for 3 years:
 - b) that to rank for suspension in terms of subparagraph (a) hereof payments shall be made as to F500 on or before 1st May 1980 and F200 on the first day of every second month thereafter, commencing 1st July 1980.
 - c) that the Accused is not convicted of any offence of which theft is an element committed during the period of suspension.
3. This sentence is without prejudice to any civil proceedings that Builders Place Co. Ltd. may be advised to take against the Accused. The Court, however, expresses the hope that Builders Place Co. Ltd. will not take any action which may stultify the present sentence. Should it do so the present sentence will be modified accordingly.

(C. J. M. NATHAN)

CHIEF JUSTICE