

IN THE HIGH COURT OF SWAZILAND

In matter of: CASE NO. C/ 296/83

THE QUEEN

VS

1. PHILLIP NGCAMPHALALA
2. PETROS MALAZA
3. ERICH SCHOFIELD
4. AMOS J.T. DLAMINI

CORAM: HASSANALI

FOR CROWN: MR. THWALA

FOR ACCUSED: IN PERSON

JUDGEMENT

(Delivered 22nd April, 1985)

HASSANALI, J

The Accused are charged with the crime of theft. First Accused pleaded guilty while the other three pleaded not guilty.

After hearing submissions in mitigation, the First Accused was convicted and sentenced.

542 D/Sergt B. Ndinisa said his evidence that he was the investigating officer in this case. When the First Accused was questioned about the articles that were missing from Builders Suppliers in Manzini, he took him to the 3rd Accused who gave him 5 rolls of Gumplas which he had at his place. He also collected a wheelbarrow from one Nkambule after he was directed to him by the 4th Accused. He further said that the 2nd Accused denied any involvement in this theft.

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When he was cross examined by the 2nd Accused, he said that the Nightwatchman had told him that he (2nd Accused) had come there in a yellow van driven by an unknown person. He also said that the 1st Accused came alone.

Absalom Makhanya said that when he met the 2nd Accused, sometime in January 1983, he told him that he was in a predicament because Mhlanga, the Night Watchman, had alleged that he had removed certain articles from the Builders Suppliers.

Simon Gina, an accomplice witness testified that he was a Night Watchman at Builders Suppliers. At about 10.00a.m. the 1st Accused in the company of two others arrived on the premises. They removed Gumplas and a wheelbarrow. When they came there for the second time, they gave him E40.00. On the same day between 1.00p.m. and 1.30p.m. the 2nd Accused and his conductor took 10 rolls of plastic sheets and loading them into a yellow van, drove off. In cross-examination, he first said that he did not know the 2nd Accused but later to another question he admitted that he knew him.

Dan Dlamini stated that he gave a lift to the 1st Accused in his car. He (1st Accused) told him that he was going to Builders Suppliers to collect some goods. The 4th Accused was following them. At the Builders Suppliers, the 1st Accused put 5 rolls of gumplas into his vehicle and offered the wheelbarrow to the 4th Accused in return for E25-00, but the 4th Accused

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the 4th Accused did not want it. The 5 rolls of gumplas were delivered to the 3rd Accused.

Lucia Dori said that he was a Director of Builders Suppliers. In January, 1983 some goods went missing and he reported the matter to the police. He later identified a wheelbarrow and some rolls of plastic sheets at the police station.

The 2nd Accused made an unsworn statement. He denied that he took any rolls of gumplas from Builders Suppliers.

The 3rd Accused in an unsworn statement said that the 1st Accused left with him five rolls of gumplas as security and obtained E250-00 from him, promising to take them back on his return from Johannesburg.

The 4th Accused also made an unsworn statement. He said that 1st Accused tried to sell him a wheelbarrow but since he already had one, he did not want it. The 1st Accused then asked him to keep it, saying that he would collect it on his return from Johannesburg.

The Crown case mainly depended on the evidence of Simon Gina, an accomplice witness. This theft was perpetrated in broad daylight, with the help of the accomplice witness. Evidence against the 2nd Accused was scanty and depended mainly on the evidence of the accomplice witness, who I find to be unreliable. Under cross-examination he first denied knowing the 2nd Accused but later admitted that he knew him. Therefore it is very unsafe to convict the 2nd Accused on the uncorroborated evidence of this accomplice witness.

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In the circumstances, I find him not guilty and acquit him.

As regards the 1st Accused, the only evidence against him is that he gave E250-00 and obtained the five rolls of plastic sheets. But he said that he gave this amount only as security for the sheets. I There is no evidence to show that he had prior knowledge that they were stolen property. It appears to me that he acted in good faith when he took the rolls, as he says as security. Therefore, I find him not guilty and acquit him.

As regards the 4th Accused, the only evidence that links him to the theft is the evidence of Dan Dlamini who said that the 1st Accused tried to sell him (4th Accused) the wheel barrow, but that he did not want it. However, it was left with him to be recovered later by the 1st Accused. Although, a strong suspicion exists against him, in view of scanty evidence, I give him the benefit of doubt and acquit him.

The exhibits to be returned to the complainant.

J.A. HASSANALI