



IN THE HIGH COURT OF SWAZILAND

CRIMINAL APPEAL NO.77/95

In the matter between:

THULANI DLAMINI	1ST APPELLANT
VUSI T. MDZINISO	2ND APPELLANT
VS	
REX	RESPONDENT

FOR THE CORAM	:	S.W. SAPIRE A.C.J
		J.M. MATSEBULA A.J
FOR THE CROWN	:	MR. MASEKO
FOR THE DEFENCE	:	IN PERSONS

JUDGEMENT

01/03/96

The two appellants were convicted of contravening Section 3(1) of the Theft of a Motor Vehicle Act No.16/1991 being alleged that they stole a Toyota Corolla registration number SD838NM the property of or in the lawful possession of Ellen Simelane. They had pleaded not guilty but subsequently convicted by the learned Senior Magistrate. They were each sentenced to a term of two years imprisonment.

They have each noted an appeal against the conviction and sentence. Their grounds of appeal are as follows:

APPELLANT 1

1. states that he was unfairly convicted and sentenced by the Magistrate and that;
2. it was apparent that he was not the one who stole the motor vehicle;
3. that the motor vehicle had been brought to him by a gentleman called Bongani as it had mechanical problems;
4. against the sentence, he stated that it was harsh and asked that it be suspended.

APPELLANT 2

All that appellant no.2 says is he was unfairly convicted and sentenced.

According to the record before the Court, it was not disputed that the motor vehicle belonged to the complainant and was properly identified at the trial. Nor was it disputed that it had been found in possession of the two appellants. The only defence appellant one and two raised and advanced at the trial was that the motor vehicle was brought to them by Bongani for repairs. The learned Magistrate rejected this defence and in my view he was correct in rejecting it. There are clearly conflicting accounts given by appellant No.1 at Page 10 of the typed record relating how the motor vehicle was left by the said Bongani with first and second appellant. That account given

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by appellant No.1 differs from account given by appellant No.2 at Page 12 of the typed record.

According to appellant No.1 Bongani had asked first and second appellant to go and park the motor vehicle at Bulembu and they had gone there but did not find the person at whose place the motor vehicle had to be parked.

On the 1st April 1995 they had parted company with Bongani, entered a bus and they were then arrested. According to appellant No.2 at Page 12 they had not been arrested by the 31st April 1995 and yet PW4 Constable Chirwa clearly stated at Page 8 that he arrested the two appellants on the 1st April 1995.

Although Bongani was the first and second appellants' schoolmate at SCOT he suddenly disappeared and neither of the appellants know where his homestead is.

The Provisions of the Theft of Motor Vehicle Act create a presumption under Section 4(1). The learned Magistrate found that the appellants had not rebutt the presumption.

For this court sitting as a Court of Appeal, it must be satisfied that the court below was wrong in its estimate of the credibility of witnesses whom it believed and it is not enough for the appellants to merely induce in the Court of

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Appeal a state of doubt as to whether the witnesses were credible or not. In this respect see Lekaota 1947(4) SA 258(C).

The appellants failed to rebutt the presumption created by Section 4(1) of the Motor Vehicle Theft Act. In the result the appeal on conviction is dismissed.

There are no grounds for interfering with the sentence imposed by the magistrate and the appeal in regard thereto is also dismissed.



J.M. MATSEBULA
ACTING JUDGE



S.W. SAPIRO
ACTING CHIEF JUSTICE