

IN THE HIGH COURT OF SWAZILAND

CRIMINAL APPEAL NO.38/96

In the matter between:

1. PETER MDLULI 1ST APPELLANT

2. SIPHO DLAMINI 2ND APPELLANT

VS

REX

RESPONDENT

FOR CORAM

: J.M. MATSEBULA J

: B. DUNN J

FOR 1ST APPELLANT : IN PERSON

2ND APPELLANT : MR. MASINA

FOR CROWN : MR. N. NDUMA

JUDGMENT

The two appellants Peter Mdluli and Sipho Dlamini aged 27 and 24 years respectively were arraigned on six counts of housebreaking with intent to steal and theft which were alleged to have been committed over a period stretching from May 1995 - July 1995. They pleaded not guilty to all six counts and were represented by Mr. Kubheka at their trial.

The items stolen over this period of time are in respect of the six counts valued at between E2750.00 - E40788.00. They were both convicted on all the counts and sentenced to 1% years on each count with effect from 2nd March 1995.

2

The items recovered by the police witness PW11 J Maziya were identified by the respective complainants These items were recovered in a house occupied by the two appellants in the Manzini Region and the identification by the complainants is not in dispute.

Recently stolen property

Once a court is satisfied that goods found in accused's possession were stolen and accused had failed to give an explanation which could reasonably be true, the court is entitled to infer that accused stole the goods or that he committed housebreaking in order to steal them _R VS GENTLEMAN 1919 CPD.

The doctrine of recent possession was held to be a simply common-sense observation on the proof of facts by inference see S VS PARRON 1973(1) SA 603A and there can be no fast rule how "recent possession is defined " IN S VS RAMA 1966(2) 395A, a watch which had been stolen over a period of a month was said to be reason to call for an explanation because the watch was an unusual and expensive watch and would not pass easily from person to person. In each case the question is whether possession of the stolen goods is sufficiently suspicious to call for an explanation. In the absence of some reasonable explanation the court may infer guilt and convict.

3

in the present case the appellants shared one common homestead where the stolen goods were found. A finger print, proved to be that of the first Appellant was found at the homestead of the complainant on count 4. the period over which the goods were stolen from the different complainants is a continuous one to wit May 1995 to July 1995. I find that the inference was irresistible and the Learned Magistrate did not misdirect himself in concluding that the appellants had committed the housebreaking with intent to steal and theft.

I would therefore dismiss the appeal by the appellants on conviction and sentence and confirm the conviction and sentence.

I agree

J. M. MATSEBULA B. DUNN

JUDGE JUDGE