

a:Mkhabela

IN THE HIGH COURT OF SWAZILAND

THE KING

vs

LOUISE MKHABELA

BONGINKOSI GCINA TSABEDZE

Review case No. 16/1997

Review Judgment

(16/02/98)

The accused were charged in the Subordinate Court for Manzini, it being alleged that they were guilty of armed robbery in that on the 20th March, 1997 and at or near Ndlunganye the accused intentionally induced one Muntu Dlamini to submit to the taking and the robbing of his car SD157 BN Nissan one tonner valued at E72 000 at gun point. There is certainly evidence that the complainant was robbed of his motor vehicle but there is no evidence to show that the accused persons took part in the robbery.

There is however evidence that the two accused took part in the stripping of the motor vehicle shortly after it had been taken from the complainant. The Magistrate found that in the circumstances the accused must have known that Timothy on whose instructions they dismantled the vehicle must have come into possession thereof illegally.

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This would have justified a conviction on the charge of theft but certainly not robbery. The two accused did not have the mens rea required for robbery, because there is no evidence that they knew that the car had been taken at gun point. They should therefore have been found guilty of theft by being accessories thereto.

Theft is a less serious crime than robbery by reason of the element of violence and in sentencing the accused the Magistrate should have borne this in mind and sentence them accordingly. As the accused were first offenders and the degree of participation in the offence was comparatively minor I think they deserve to have the benefit of a suspended sentence. The first accused is 23 years of age while the 2nd accused is only 17 years of age. I also take into account that both accused have been in custody for nearly a year waiting the outcome of their trial.

I therefore suspend the sentence imposed by the Magistrate, namely, 2 years imprisonment for a period of 3 years on condition that they are not hereafter found guilty of any offence involving unlawful taking of a property of another committed during the period of suspension.

S.W. SAPIRE

ACTING CHIEF JUSTICE