IN THE HIGH COURT OF SWAZILAND

APPEAL CASE NO. 11 / 2004

In. the matter between:

REX

VS

SHOBANE DLAMINI 1st APPELLANT

NHLANHLA SANDILE DLAMINI 2nd APPELLANT

CORAM BROWDE JA

STEYN JA

TEBBUTT JA

JUDGMENT

Steyn JA

Before us on appeal are two appellants who were accused no. 1 and no.2 in the High Court and I will refer to them as such.

The charges which are relevant for present purposes are two counts of robbery, one of housebreaking and theft and one of the theft of a motor vehicle. The two accused challenged the convictions on these charges as well as appealing against the sentences imposed.

I do not propose to deal exhaustively with the evidence which sustained the charges. The Crown tendered the evidence of an accomplice (PW2 in the court below) who described in detail how the offences were planned and executed under the leadership of accused no. 1 and with the extensive participation of accused no.2 and the witness. His evidence was corroborated by a number of witnesses including police testimony that linked both accused with the goods stolen pursuant to the commission of the offences with which they were charged. There can be no doubt that the Crown proved their guilt beyond all doubt.

Unfortunately when the trial Judge delivered his judgment he failed to enter his findings of guilt on the two robbery charges. It is clear, however, that he was satisfied that the guilt of the two accused had been established on these counts and that he was indeed finding them guilty accordingly.

If any doubt existed that this was so, it is removed by his introductory comments when passing sentence. He says, "The two of you have been found guilty of three counts of robbery", (this was a second and more serious error because he had convicted the accused on two counts of robbery and one of housebreaking and theft.)

There can thus be no doubt that both of the accused were correctly convicted on the two robbery counts. Mr. Simelane, who appeared for accused no.2 relied on what he called the irregularity of the trial court in not formally entering a verdict. This, he said, invalidated the convictions on the two robbery counts. We are satisfied that although it was unfortunate that the court did not do so, it is abundantly clear that he did in fact convict them.

The trial Judge also unequivocally entered a verdict of guilty of housebreaking on count 8. The record reads:

"Regarding count 8, that of housebreaking and theft, A1 and A2 are found guilty as charged".

However it would appear that when he sentenced the two accused on this count the Judge a quo laboured under a misapprehension that he had convicted them of robbery. I say this because, not only does he refer to having convicted the accused on three robbery counts, he imposed the same sentences on this count as he did on one of the robbery counts. The sentences on count 8 will therefore have to be adjusted to reflect the fact that the verdict was one of guilty of housebreaking and theft not robbery. No violence having accompanied the theft of goods in question means that a lesser degree of moral guilt is to be attributed to the two accused than if they had been convicted of the more violent form of crime i.e. robbery.

It is recorded that the two accused are found guilty as follows:

1. On count 5 (five) : guilty of robbery
2. On count 6 (six) : guilty of robbery
3. On count 7 (seven) : guilty of theft
4. On count 8 (eight) : guilty of housebreaking with intent to steal and theft

The sentences imposed by the High Court on counts 5, 6 and 7 are confirmed. On count 8 the sentences imposed on the two accused of 4 years imprisonment are set aside and a sentence of 2 years imprisonment is imposed in respect of both accused on this count. The sentences on all four counts are to run concurrently and are backdated to the 10th day of December 2001.

Save as aforesaid the appeals are dismissed and the convictions and sentences are confirmed.

J.H STEYN JA

I agree J. BROWDE J.A.

I agree P.H. TEBBUTT JA

DELIVERED IN OPEN COURT ON THIS 15™ DAY OF NOVEMBER 2004