IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE Appeal Case No. 37/2001

In the matter between

HAPPY JALUZA MAZIBUKO Appellant

Vs

REX Respondent

Coram LEON, JP

TEBBUTT, JA

BECK, JA

For Appellant In Person

For Respondent Mr. Dlamini

JUDGMENT

TEBBUTT, JA

The appellant was convicted by Matsebula J in the High Court on three counts of robbery. He was sentenced to 10 years imprisonment on each count, to run consecutively i.e. an effective sentence of 30 years imprisonment. He now appeals to this Court against his convictions and sentences.

On all three counts the Crown's allegations were that appellant had robbed the complainants of their motor vehicles. These three counts were numbered counts 2, 3 and 7 on the charge sheet, other counts having been withdrawn.

On count 3 the motor vehicle in question was found by the police in the possession of one Judas Fakudze to whom the appellant had admittedly sold it. On count 7 the vehicle was found by the police in the possession of the appellant's brother-in-law with whom the appellant had admittedly left it. On count 2 the vehicle in question was admittedly sold by the appellant to one Mlozi Dlamini, who in rum sold parts of it to other persons, in whose possession the police found the parts.

The appellant's defence at the trial was that he had received the vehicles from other persons, knowing them to have been stolen. He had thereafter sold them to the . persons mentioned above. He denied that he had robbed the complainants of their vehicles or participated in the robberies.

That defence was, however, rejected by the trial judge because of the evidence which the Crown led of an accomplice, one Thulani Shongwe. The complainant on count 7 testified that on the night he was robbed of his vehicle he was awakened by someone knocking on the door who said

it was the police. They asked him to drive them in his car to the police station, accusing him of having earlier knocked down a child pedestrian. On the way one of the men took over the driving of the car. This man later stopped the car and told the complainant that they were not policemen. At gun point this man ordered the complainant out of his car and told him to run off or they would kill him. The men then drove away in the car. On count 3 the complainant, a taxi owner, described how he was hired by two men to drive them to a certain place. On the way he was told to stop and at gunpoint was robbed of his vehicle.

The accomplice, Thulani Shongwe, testified that he was present on both these two occasions. As to the first he said that it was the appellant who awoke the complainant announcing that they were the police and it was he who forced the complainant out of his car at gunpoint. He also testified that it was the appellant who at gunpoint robbed the taxi owner of his vehicle on count 3.

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The learned trial judge carefully evaluated the evidence of the accomplice, Shongwe, being aware of the cautionary rule applicable to such evidence. He found that his evidence was reliable. It was corroborated in every material respect and he accepted his evidence that the appellant was one of those who robbed the complainants on counts 3 and 7.

On the evidence as it appears on the record no fault can be found with this finding. Indeed on appeal the appellant's only criticism of Thulani Shongwe's evidence was that he was lying because he had told the trial court that he also went under the name of Thulani Dlamini. Shongwe's explanation to the Court was that he was Thulani Dlamini but because he grew up at the Shongwe household he became generally know as Thulani Shongwe. This does not make him a lying witness or detract from the value of his evidence as a whole. Appellant's appeal on counts 3 and 7 must therefore fail.

On count 2 Shongwe did not testify that the appellant was involved in the robbery of the complainant on this count and Mr. Dlamini for the Crown conceded that he could not sustain the conviction of robbery on this count. However, on appellant's own admission he was guilty of receiving stolen property.

To that extent then the appeal on this count succeeds.

I turn to the question of sentence. On count 2, as the conviction has been altered the sentence of 10 years for robbery must, in consequence, be set aside and the Court is at large to pass sentence afresh.

The appellant's involvement in robbing innocent victims of their motor vehicles and selling them to unsuspecting buyers and in receiving stolen vehicles, well knowing them to be stolen and selling them to innocent buyers shows that he was a participant in a series of planned and organised motor hijackings. As pointed out by the trial judge evidence was given that such crimes have reached disturbing proportions in Swaziland and that severe deterrent sentences for such offences are called for. A sentence of 10 years on each count was therefore fully justified.

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However, making them ran consecutively and so causing a cumulative sentence of 30 years imprisonment is, in my view, so severe as to warrant interference by this Court. I would, accordingly, allow the sentences on counts 3 and 7 i.e. the robbery charges, to run together. The conviction for receiving stolen property is a separate offence and I would not allow the sentence on that count to run concurrently with the others. That charge too merits a heavy sentence. In my view a sentence of 5 years imprisonment would be a condign one and it will run consecutively to

the others.

In the result, therefore, the following order is made

1. The appeals on counts 3 and 7 against both conviction and sentences are dismissed.

2. The appeal against conviction on count 2 succeeds to the extent that the conviction is altered from one of robbery to one of receiving stolen property well knowing it to be stolen

2.1 The sentence on count 2 of 10 years imprisonment is set aside and there is substituted therefor one of 5 years imprisonment.

2.2 The sentences of 10 years imprisonment on counts 3 and 7 are confirmed but they are ordered to run concurrently with one another and are backdated to 16 February 1999.

2.3 The sentence of 5 years imprisonment is to run consecutively to those on counts 3 and 7.

DELIVERED in open court this 7th day of June, 2002

P.H. TEBBUTT, JA

I AGREE

R.N LEON, JP

I AGREE

C.E.L. BECK, JA