IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.

In the matter between:

PETER MDLULI
SIPHO DLAMINI
VS
REX

CORAM	**:**	**BROWDE JA**
	:	**STEYN JA**
	:	**TEBBUTT JA**
FOR THE APPELLANTS	**:**	**IN PERSON**
FOR THE CROWN	**:**	

JUDGMENT

Steyn JA:

This is an application for leave to appeal. Both appellants were convicted in the Magistrate's Court on six counts of housebreaking with intent to steal and theft. They were each sentenced to 18 months' imprisonment on each count; i.e. an effective sentence of 9 years' imprisonment. They appealed to the High Court both against their convictions and sentences. Their appeals were dismissed and their applications for leave to appeal to this Court were refused. They now seek such leave from this Court.

The six charges of housebreaking and theft of which appellants were convicted arose from a series of burglaries that occurred during the period the 21st May 1995 and the 29th July 1995 in Mbabane. Subsequently and on the 2nd and 4th August 1995, many of the articles stolen in the

course of these housebreakings were recovered in a two bedroomed house occupied by the appellants. The articles recovered were identified by each one of the complainants as being property stolen in the course of the six burglaries referred to above. The Crown therefore relied exclusively on circumstantial evidence, and more particularly on the evidence of the possession of the stolen articles by the appellants, inasmuch as they were found in the house occupied by them.

The first appellant argued his appeal in person. He challenged his conviction only in respect of counts 1, 2 and 3 and did not dispute that he was properly convicted on counts 4, 5 and 6. Mr. Kubheka, counsel for the second appellant, challenged his client's convictions on counts 2, 4 and 6 only, conceding the correctness of the conviction in respect of second appellant on counts 1, 3 and 5. Both appellants attacked the convictions on the ground that the goods they were alleged to have stolen were not found in their possession.

Mr. Kubheka in the course of a carefully reasoned argument relied principally on the argument that each of the appellants could only be held liable for goods found in his own room. The goods found in a room other than his own were not in his possession and he could accordingly not be held inferentially to have been involved either in the housebreakings or the thefts that occurred in the course thereof. He proceeded on the basis of this submission to analyse the evidence and to indicate which goods were found in second appellant's room and challenged the convictions on counts in which such possession was not established. He quite correctly conceded, however, that should the court find that the series of housebreakings had been a joint venture between the appellants, the substratum of his argument would fall away. The fact that the stolen goods were found in a room other than that occupied by the particular appellant would then be irrelevant for the purposes of determining his guilt.

The question therefore is; did the Crown establish beyond a reasonable doubt that all six housebreakings occurred pursuant to a joint enterprise by the two appellants? In this regard the following factors appear to me to be supportive of such a finding:

1. All the housebreakings occurred in the same town, viz Mbabane.
2. All of these offences were committed during a three month period i.e. during May, June and July 1995.
3. Two of them occurred on consecutive nights.
4. The fingerprint of first appellant was found on a window of the house that was broken into on count one. This is a count on which Mr. Kubheka conceded that the second appellant was correctly convicted. We therefore know that this was a crime jointly committed by the two appellants.
5. On count 5 both appellants have admitted that they were correctly convicted. The two offences charged in counts 1 and 5 were therefore also jointly committed by the appellants.

In these circumstances the inference that these two persons who live together, also were jointly responsible for the housebreakings and thefts committed as charged in counts three, four and six is irresistible. In so far as count two is concerned there was uncontested evidence that the tool-box found in the second appellant's bedroom belonged to the complainant on count 2. Second appellant's explanation as to how he came to be in possession of this tool-box was fanciful and the attempted corroboration of his version failed. His conviction on count two is therefore proved beyond a reasonable doubt. Moreover both the grey jersey and the gold watch identified by the complainant as property stolen from him were found in first appellant's bedroom. His conviction on this count was also established as being a joint venture.

For the above reasons I am satisfied that the Crown proved the guilt of the two appellants beyond a reasonable doubt on all six counts on which they were convicted by the trial court. Leave to appeal against their convictions is therefore refused.

Both accused admitted previous convictions. They were for similar offences. There is in my view no substance in the contention that sentences of 18 months imprisonment are inordinately severe, neither was counsel able to point to any misdirection by the trial court. Leave to appeal against their sentences is accordingly also refused. The convictions and sentences are confirmed.

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J.H. STEYN JA

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J. BROWDE JA

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P.H. TEBBUTT JA

Delivered in open Court on this …….. day of May 2000.
