IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRI APPEAL NO. 43/97

In the matter between:

COUNTRY M. SITHOLE	1st APPELLANT
VUSI MAZIYA	2nd APPELLANT
And	
THE KING	RESPONDENT
CORAM :	DUNN J.
	MAPHALALA A J.
FOR THE APPELLANT :	IN PERSON
FOR THE RESPONDENT :	MR WACHIRA

JUDGMENT

17th SEPTEMBER 1997

The two appellants appeared before the senior Magistrate sitting at Manzini charged with the crime of Robbery. The particulars were that at UNISWA, Kwaluseni the accused "did wrongfully and unlawfully assault Musa Ndzabandzaba and by intentionally using force and violence to induce submission by the said Musa, did take from his presence and out of his immediate care and protection certain property, to wit items listed in attachment "A" valued at 23,180.00, the property of or in the lawful possession of Musa Ndzabandzaba."

The appellants pleaded not guilty to the charge. They were, at the conclusion of the trial found guilty as charged and sentenced to seven years imprisonment. The present appeal is against the conviction and sentence.

The appellants have both argued their appeals before us this morning. In so far as the conviction is concerned, the arguments advanced by the appellants is that they were not positively identified by the complainant as being the persons that entered his house on the day in question. That may be so, but the crown's case against the appellants rested on evidence of possession by the appellants of the items that were taken from the complainant in the course of the robbery.

The evidence presented before the senior magistrate was that the appellants were found in possession of items that were taken in the robbery at the complainant's house. According to the police officers that testified the appellants voluntarily led the police to various persons, who also gave evidence, from whom the stolen property was recovered. The bulk of the recovered property was clearly identified by the complainant and is set out at pages 15 and 16 of the typed record. The property was recovered early in June 1996.

The appellants gave an explanation as to how they had come into possession of the property. The explanation was that the appellants were requested by one Gerald Linda, an acquaintance of the 1st appellant, to assist him in conveying his household effects from Mbhuleni location to Two Sticks Housing Estate. The goods having been conveyed, Gerald then gave some of the items to the 1st appellant to go and sell in order to raise money to enable Gerald to travel to South Africa. Some items were given to the 2nd appellant as a token of Gerald's appreciation of the 2nd appellant's assistance. All these items were subsequently identified by the complainant.

The appellants could give no acceptable evidence as to the identity or whereabouts of the Gerald they had referred to. They led the police to a house at Two Sticks but the occupants did not know of Gerald's whereabouts. The 1st appellant gave no explanation for property which he conveyed to Hhelehhele area and which he had not mentioned as part of the goods, which he was given to sell by Gerald.

The senior magistrate considered the evidence and rejected the explanation given by the appellants.

He came to the conclusion, based on the possession by the appellant of the recently stolen goods, that the appellants were the perpetrators of the offence. We can find no fault with the approach to and the assessment of the evidence as a whole by the senior magistrate and the conclusion at which he arrived. The appellants' dealings with the property clearly indicated the falsity of the evidence about Gerald.

The appeal against the conviction is, in the circumstances, dismissed.

Turning to the question of sentence, the appellants argued that the sentence of seven years was severe. Secondly, that the magistrate did not backdate the sentence to their respective dates of arrest.

Dealing with the question of the severity of the sentence, regard must be had to the nature of the offence that was committed. From the monthly returns; appeals and reviews from the subordinate courts, it is quite clear that there is an alarming escalation in the number of housebreaking cases, despite the stringent sentences presently being passed by the courts. There are far too many cases of this nature where people are attacked inside their burglar-proofed homes, assaulted and their property made off with. The attackers make bold and daring raids into houses, with the occupants inside. There are numerous cases in which innocent people are raped and murdered in the course of such raids. It is for the courts to continue to send out the appropriate message to people like the appellants, that the community does not approve of and condemns this type of crime.

This court, sitting as a court of appeal, is empowered to interfere with the sentence of a subordinate court only in certain circumstances. None of those circumstances are present in this appeal. In our view and given the circumstances of the case, the sentence of seven years imprisonment is a proper one.

It has been a longstanding and salutary practice of the courts to backdate sentences in cases where an accused person has through no fault of his own, spent an appreciable period of time in custody awaiting his trial.

In the circumstances the appeal against the sentence is also dismissed. It is, however, ordered that the sentence imposed against the first appellant be backdated to 6th June 1996 and that imposed on second appellant be backdated to the 8th June 1996.

B. DUNN	I agree	S. B. MAPHALALA
JUDGE		ACTING JUDGE