

14/12/82  
CRI/A/37/82

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOHAPI NTABE Appellant

v

REX Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice  
T.S. Cotran on the 29th day of December, 1982

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I have disposed of this appeal on the 22nd December 1982 in the manner that appears later in this Judgment. My reasons follow.

The appellant was convicted of an offence created by s. 337 of the Criminal Procedure and Evidence Proclamation as amended (now s. 343 of the Criminal Procedure and Evidence Act 1981) and was sentenced to two years imprisonment.

He was originally charged with theft of a motor vehicle.

The charge upon which the appellant was convicted was framed as an alternative charge.

There is no merit whatsoever in the appeal against conviction. The vehicle in question was stolen in Vereeniging in the Transvaal on 7th March 1980 and was found in the appellant's possession at Motimposo in Lesotho on the 14th March 1980, i.e. only 7 days later. The explanation that the appellant opted to give was far fetched and extremely unlikely.

The appellant should, in my view, have been convicted on the main charge or at best for him on receiving property knowing it to be stolen. I do not however propose to disturb the magistrate's finding for it will only amount to my engaging in an academic exercise.

I confirm the conviction.

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The substantive sentence of two years imprisonment has not caused me a sense of shock either. What has caused me a sense of shock is the fact that it took the learned magistrate until the 5th March 1982 - i.e. nearly two years to dispose of a straightforward case where the Crown had all the witnesses available and where the applicant was at no time responsible for the slightest delay.

An accused person is entitled to a speedy trial. Sometimes this is not possible for example when the accused absconds and is rearrested, or when difficulties arise in tracing witnesses, but neither of these (or other) factors obtained here. The reason for the inordinate delay appears to have been solely the learned magistrate's own convenience and the appellant advocate's own convenience, with the result that the charge, even though proved, had been lying over this appellant's head for two years. He was faithfully making one appearance after the other but nothing seems to have happened from November 1980 to March 1981, and nothing happened from April 1981 to the March 1982. In the circumstances I am prepared to suspend one year of the sentence for a period of three years from today on condition that appellant be not convicted of an offence involving dishonesty during the period of suspension.

CHIEF JUSTICE  
29th December 1982

For Appellant : Adv. Monapathi  
For Respondent: Mr. Kabatsi