

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MALEFANE LOKO

v

R E X

J U D G M E N T

Delivered by Hon. Mr. Justice F.X. Rooney  
on the 28th day of June, 1982.

Mr. T. Mda for the Appellant  
Mr. Kabatsi for the Crown.

The appellant appeared before a Subordinate Court for the 2nd Class (G.T. Jane, Esq.) on the 15th December, 1981 charged with the offence of stealing M3,967.14 the property of one 'Matlhalane Lesoli. He pleaded not guilty and he was not represented at the trial.

The case against him was that on the 14th March, 1981, he received from Johannes Ramarou (PW.1) a bag of a particular description which Ramarou said contained the amount mentioned in the charge. Both Ramarou and the appellant are employed by 'Matlhalane Lesoli (PW.6) a trader in the area who has a number of shops. It was the duty of the appellant to take the bag to Mr. Lesoli's headquarters at Sekake. It was said that he did not do this. Several witnesses gave evidence as to seeing the distinctive bag in the possession of the appellant on the day in question, either at the shop managed by Ramarou or while the appellant was on his way to Sekake.

In his defence the appellant denied receiving the bag from Ramarou. He had not signed for it or had its contents counted in his presence. He is therefore the victim

2/ of a conspiracy ....

of a conspiracy of lies engineered by Ramarou (PW.1) to conceal his own crime. The magistrate rejected the appellant's explanation and was satisfied that the evidence against the appellant was ample and convincing.

It is not clear from the record as to when the accused was arrested. Detective Trooper Sillmane (PW.8) said that on the 23rd March, 1981, he investigated the matter and as he was not satisfied with the explanation given to him by the appellant, he cautioned and charged him. I note that the appellant was admitted to bail on the 1st May. The trial did not take place until the following December. There was thus ample opportunity for the police to make a thorough investigation into the case. They either did not do so or their investigations were inconclusive.

Ramarou produced in evidence a deposit book (Exhibit A) in which he records moneys transmitted from his store to head office. These transfers are made every week or so and the manager records in the book the amount of bank notes, the numbers and amounts of cheques and numbers and amounts of postal orders dispatched. On the 14th March last year the deposit book reveals that M1,400 in bank notes, M1647 in postal orders and M920.14 in cheques were counted. No evidence was led as to whether any of the cheques or postal orders were presented for payment by anyone between the 14th March, 1981 and the date of the trial.

It seems to me that such evidence ought to have been led from officials in the post office and the banks upon which the cheques were drawn. There are only two possibilities, either none of these documents ever came to light again (from which an inference may be drawn that they were disposed of otherwise by the thief) or some of the cheques or postal orders were subsequently cashed (and in those circumstances if it could not be shown that the appellant was responsible then an irresistible conclusion that he was the thief would not arise). On the evidence

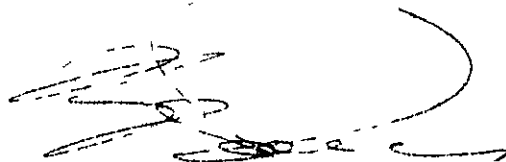
3/ led in the .....

led in the subordinate court, neither the bag nor the money nor the cheques nor the postal orders were subsequently found in the possession of the appellant.

I consider that it is in the interest of justice that the subordinate court should be supplied with the missing evidence. By the application of Section 69(2)(b)(ii) as read with Section 74(4) of the Subordinate Courts Proclamation, I make the following order in this matter.

1. The conviction of the appellant is set aside and he is released on bail forthwith on the same terms and conditions as attached to the bail granted to him on 1st May, 1981.
2. The case is remitted to the Court a quo
3. The magistrate is instructed to afford the prosecutor an opportunity to bring before him (within a reasonable time) such evidence as may be available in regard to the cheques and postal orders listed in Exhibit A on the 14th March, 1981.
4. The accused must be given an opportunity to cross examine such witness and at the conclusion of the additional evidence for the Crown, he must be given an opportunity to give evidence in his own defence and to call witnesses.
5. Having heard such additional evidence the magistrate is directed to bring in a verdict and in the event of a conviction he is to give his reasons in writing.
6. Immediately upon the conclusion of the proceedings, the magistrate is required to remit back the record to this Court for further consideration.

This Order is made without prejudice to the powers vested in the Director of Public Prosecutions by the Criminal Procedure and Evidence Act 1981.



F.X. ROONEY  
JUDGE

28th June, 1982.

Attorney for the Appellant :  
Attorney for the Crown : Law Office.