

IN THE HIGH COURT OF LESOTHO.

In the Appeal of

SHANKI SOFE

Appellant

v

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice F.X. Rooney
on the 16th day of September, 1982.

Mr. Kolisang for the Appellant
Mr. Khaue for the Crown.

On the 6th January, 1981, David Rendle (PW.1) a teacher at St. Paul's Mission in the Butha-Buthe District went on a holiday to Swaziland leaving his house unoccupied. When he returned on the 23rd January, he found that in his absence his house has been plundered by thieves who had removed furniture, clothing and household utensils. The appellant is one of a number of persons who on two occasions visited the house and removed property therefrom. The appellant said that he was invited by one Ts'okolo (PW.5) to assist in the removal of the property and that he went along in the mistaken and innocent belief that it all belonged to Ts'okolo's father Khauda Sebotsa (PW.3).

The appellant was tried by Mr. M.M. Ramashamole and on the 10th September, 1981, he was found guilty of housebreaking and theft and sentenced to two years imprisonment. He has appealed to this Court against his conviction.

2/ Mr. Kolisang for

Mr. Kolisang for the appellant argued that having regard to the nature of the evidence given by the prosecution witnesses the appellant's version could reasonably be true and he was therefore entitled to the benefit of the doubt.

It is a principle of general application that when an accused person has given an account of himself which is not in conflict with the evidence of the prosecution and that account is consistent with his innocence he is entitled to an acquittal. However, different considerations arise where there is a conflict of evidence. The trial court is under a duty to resolve the conflict by an evaluation of the testimony placed before it. Unless it can be shown that the magistrate misdirected himself in regard to the evidence or that the verdict cannot be supported by the evidence an appeal court will not interfere with a finding of fact. (REX v. DHLUMAYO 1948 (2) S.A. 677).

Ts'okolo Sebotsa (PW.5) was introduced to the Court below as an accomplice. He said that the appellant asked him to fetch certain goods at S. Paul's Mission. A man named Sepetla was also present. Ts'okolo made use of a vehicle belonging to his father Khauda (PW.3). He said that he drove the appellant and Sepetla to the house which they entered and came out afterwards carrying furniture and utensels which were loaded on the vehicle. This occurred at about 7.00 p.m. The goods were taken to the accomplice's home at Kalo.

A few days later the appellant went alone with this witness to the house previously visited. They arrived at dusk and again they took away certain items of furniture which they brought to the accomplice's house. Ts'okolo requested the appellant to look for buyers for these articles.

The cross-examination of Ts'okolo revealed certain discrepancies in his evidence and like many accomplices he endeavoured to minimize his own responsibility. He even

3/went to the

went to the extent of saying that he was unaware that the property which he conveyed in his truck was being stolen from the house at St. Paul's Mission.

Other evidence connecting the appellant with this crime included that of Khauda (PW.3) who told the court that the appellant approached him and asked him if he was interested in buying certain items of furniture. By arrangement with the appellant, he sent his son Ts'okolo to bring the articles in question to him for inspection. He lent his vehicle for this purpose. He said that he paid M120 to the accused for certain items he bought he retained a refrigerator which he intended to buy but did not have the cash to pay for it.

Another witness bought a stove from the appellant for M200 for which he paid a deposit of one half of this amount. When he discovered that the stove was not new he disputed the price agreed upon. He also obtained a gas cylinder from the appellant. Finally, Motheba Koabola (PW.6) said that in January 1981, the appellant and Ts'okolo came to him. They had a wardrobe which Ts'okolo offered to sell. The appellant said that he was the owner and it was agreed to sell this article to this witness for M18.00. Three months later, the police came and took the wardrobe away.

Although the handling of the exhibits in the court below leaves much to be desired, I am satisfied that the articles allegedly sold by the appellant were included in those which belonged to David Randle and which had been stolen from his house.

The appellant said that he had been invited by Ts'okolo to help him load some goods. He went to St. Paul's Mission to a house outside the Mission yard. He claimed that when he asked Ts'okolo to whom the goods belonged he was informed that they were Khauda's. Among the goods which were loaded into the van on the second occasion, was the wardrobe which Sepetla had told the

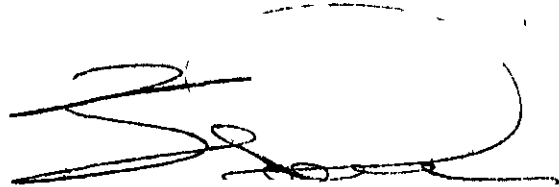
4/ appellant belonged

appellant belonged to him. Ts'okolo met someone who wanted the wardrobe. The appellant received M18 for it with the intention of handing this over to Sepetla. The appellant denied that he sold any articles to Ts'okolo's father or to anyone else including Tseko Kome (PW.4). In other words he was an innocent victim of other people's wrongdoing.

The magistrate did not accept the evidence of the appellant and he concluded that the appellant was well aware of what was going on and that he actively participated in the housebreaking and theft.

to/ Having regard/the evidence adduced, I do not see why this Court should reach a different conclusion.

This appeal stands dismissed.



F.X. ROONEY

JUDGE

16th September, 1982.

Attorney for the Appellant : Mr. Kolisang,
Attorney for the Crown : The Law Office.