Hon. Ntsekhang J.

CRI/A/12/83

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

CHARLES MAKOTOKO Appellant

v

R E X Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 10th day of June, 1983.

The appellant and one Tieho Khopeli appeared before the Subordinate Court of Maseru charged with (i) Theft common, (ii) Malicious injury to property, (iii) Contravention of Section 129(1) read with Section 135 of Road Traffic and Transport Order No. 15 of 1970 and (iv) Contravention of Section 50 (a) read with (b) of Road Traffic and Transport Order No. 15 of 1970. They both pleaded not guilty to all the charges. The co-accused was found not guilty on all the charges. The appellant was also acquitted on counts II, II and IV. He was, however, convicted on count I whose allegations were as follow

> " Upon or about the 1st day of March, 1981 and at or near Ha Thamae in the district of Maseru, the said accused each or one or all of them did unlawfully and intentionally steal a motor vehicle A 9994 the property or in the lawful possession of Hlomelang Lebusa."

A sentence of 2 years imprisonment was imposed by the trial magistrate but it is against his conviction that the appellant has now appealed to this Court on the grounds :

2/ "(1) .....

"(1) That the conviction was against evidence and weight of evidence adduced at the trial in that the evidence did not disclose the offence of being found in possession of stolen property in terms of the law.

(2) That the learned magistrate did not adequately take into consideration the conflicting evidence of the crown witnesses."

The evidence, which was on the whole undisputed, disclosed that on the evening of 1st March, 1981 complainant parked his van A 9994 outside his house at Ha Thamae. He locked the gate of his premises and retired to bed. In the morning of the following day, 2nd March, 1981, he woke up to find that the gate had been broken open and the van was missing. Neither the appellant nor any other person had the right to take away his van without authority. He, therefore, reported his loss to the police who immediately commenced the search for the missing vehicle.

On 3rd March, 1981, the police and the complainant came to a place called Qeme where they found (in the open veld) the remains of a van that had been set on fire. On examining the remains of the van complainant identified them as those of his missing van. Some of its parts had clearly been removed and were missing. They included the engine, the battery and its positive terminal, the raditor, the rightside rear view mirror, the windscreen together with its third party insurance token, the doors of either side and a spare wheel. Complainant removed the remains of the van to his home.

On 18th April, 1981, complainant and P.W.2, Moeketsi Shelile, were outside Mafafa store in Maseru when they noticed P.W.4 Koroloso Lekhesa, arriving in a van. Complainant recognised the right side door on P.W.4's van as that of his missing van. He approached P.W.4 and questioned him about the door. P.W.4 explained that it had been sold to him for M15 by the appellant. This was later admitted by appellant himself.

3/ Complainant and .....

Complainant and P.W.2 then brought P.W.4 to the police charge office where he admitted before P.W.6, D/Sgt. Matela that he had bought the door from the appellant. The complainant, P.W.2, P.W.6 and two other police officers proceeded to appellant's home where appellant's van was examined in his presence.

In the course of the examination, complainant identified some of the parts on appellant's van as those he had found missing from his van. They were the engine, the radiator, the right side rear view mirror, the windscreen which still had complainant's third party token of insurance on it, the positive battery terminal, the wheel on the front left side of appellant's van and the air cleaner.

The appellant's explanation was that he had bought the engine and two doors (one of which he had sold to P.W.4) from the co-accused although he had not yet paid him anything. About the other parts that were found on his van and admittedly identified by complainant as being the parts that he had found missing from his van after it had been stolen, dismentled and set on fire, appellant said he did not know how they came to be on his van for it was some time used by certain unnamed boys.

According to complainant's evidence when he was confronted with the appellant, the co-accused conceded to have sold the engine to the appellant after certain boys had asked him to sell it for them. Complainant's evidence was, however disputed by P.W.6 who said when confronted with the appellant the co-accused denied to have sold the engine to the former. In any event, the co-accused himself did go into the witness box and denied to have sold the engine and the two doors of complainant's van to the appellant.

The trial magistrate considered the evidence as a whole and concluded that theft of complainant's van had in fact been established beyond a reasonable doubt. It seems

4/ to me that the .....

to me that the evidence was simply overwhelming in support of the trial magistrate's conclusion which cannot be faulted. The only question was whether the appellant was the person who had committed the offence.

In this regard there was undisputed evidence that the appellant was found in possession of parts of complainant's van which had been recently stolen, dismentled and set alight. On the doctrine of recent possession of stolen property where an accused person fails satisfactorily to explain his possession of recently stolen property, the Court may infer that he had stolen the property.

Appellant's explanation of his possession of some of the parts of complainant's van (the engine and the two doors)which had recently been stolen was that he had bought them from his co-accused. As has already been said, the co-accused went into the witness box and, so to speak, gave a lie to appellant's story by denying on oath that he had ever sold any of the parts of complanant's van to the appellant.

Although he claimed to have bought the parts from the co-accused appellant himself admitted that he had not paid the co-accused anything for those parts, yet he had already sold one of the doors he had allegedly bought from the co-accused.

As regard the rest of the parts that were found on appellant's van and admittedly identified by the complainant, the appellant's explanation was that he did not know how they came to be on his van which was sometimes used by certain unnamed boys. The explanation was clearly lacking in particulars in as much as appellant could not even given the names of the boys who were allegedly sometimes using his van. To that extent the explanation could not be of much assistance to the appellant's case.

5/ Considering the .....

Considering the evidence as a whole, the trial magistrate concluded, and rightly so in my opinion, that the appellant had failed to give a satisfactory explanantion (if any at all) of his possession of the parts of complainant's van which admittedly had recently been stolen, dismentled and set on fire. He, therefore, inferred that the appellant was the person who had stolen complainant's van of which dismentled parts were found in his possession.

On the doctrine of recent possession, the trial magistrate was, in the circumstances of this case, entitled to infer, as he did, that the appellant had committed the offence against which he was charged and rightly convicted him. I am, therefore, not prepared to interfer.

The appeal is dismissed.

B.K. MOLAI
JUDGE.

10th June, 1983

For Appellant : Mr. Maqutu
For Crown : Mr. Peete.