

IN THE HIGH COURT OF LESOTHO

In the matter between

REX

Vs

REFUOE TAOLE

ORDER ON REVIEW

Review Case N0.56/2001

CR.N0.399/01

Review Order N0.6/2001

IN MAFETENG

This matter came before me on automatic review. The accused in this case appeared before the Magistrate's Court – sitting at MAFETENG. He was charged with the crime of HOUSEBREAKING WITH INTENT TO STEAL AND THEFT. It was alleged that on the 4th day of September 2001 at HA RALINTSI, Mafeteng the accused did wrongfully and unlawfully with intent to steal break and enter the shop of one 'MAMOTSOANE

MONAHENG and steal certain property to wit, stock in shop – the property of the said ‘Mamotsoane Monaheng without her consent.

The accused pleaded guilty to the charge whereupon the public prosecutor after indicating his acceptance of the accused’s plea, outlined the facts of the case. Public prosecutor told the court that the evidence of the complainant will show the court that on the 4th September 2001 at about 04.00 hours when she woke up, she went to the shop – having been led there by the light from inside the shop. When she closed the shop, she did not leave the light on. She surreptitiously alerted the neighbours and the chief. They all went to the shop. On arrival at the shop, they noticed someone inside. Complainant rushed to the police station to report. The neighbours were left at the shop. The complainant made the report at Van Rooyen Police Station. She returned to the scene in the company of the police. At the shop she found that the neighbours had already apprehended the accused who was said to be the person who was inside the shop.

The complainant entered into her shop and inspected what was missing. She discovered that a loaf of bread, 6 packets of peanuts, 12 BB tobacco, 10 packets of matches, 4 packets simba, 140 biscuits, 500g surf

washing powder, 3 tins of fish, one tin of beans, 2 bars of sunlight soap were in the possession of the accused.

It must be pointed out that this is a very glumsy way of making the list of stolen items. The sizes and /or weight of the packets of peanuts, tobacco, simba chips, biscuits etc. are not mentioned. The same vagueness applies to the tins of beans and fish. All these items are not priced. There should, at least be an estimated value of the stolen goods.

When the complainant and the police arrived at the scene, all these items of stolen property were in the possession of the accused. He was taken to the police station where the said items were entered into LMP 12. They were shown to the clerk of the court. They were then handed into the court as exhibits.

The accused was found guilty as charged after he had accepted the facts as outlined by the public prosecutor. He was found to have previous convictions of the similar offence. He was sentenced to a five (5) years term of imprisonment without an option of a fine.

The crime of which this accused was charged and convicted -
HOUSEBREAKING WITH INTENT TO STEAL AND THEFT, consist of
the following essential elements:-

(a) Unlawfully (b) breaking (c) entering (d) premises (e) intent. SOUTH
AFRICAN CRIMINAL LAW AND PROCEDURE, VOLUME 11,
(common-law crimes) THIRD EDITION BY JRL MILTON Page 796.

(a) Unlawfully

The statement of agreed, facts as it stands, does not disclose the commission
of the offence charged. The complainant did not explain whether or not she
had given, even a limited permission to the accused to enter those premises.
There must be a specific facts which show that the accused was not given
permission to enter those premises. RV. Willy Ovamboland 1931 SWA 11,
RV FAISON 1952 (2) SA 671 (SR)

(b) Breaking-in

For this accused to be properly convicted of the offence charged, the facts
should include the fact that the premises were properly secured previously at
the close of the business. Subsequently discovery must be made, of the

displacement of some obstruction which forms part of the premises. R.V. Faison (Supra) for example, the locking device of the door could have been interfered with or broken. The window could have been broken, or part of the roof or wall removed. There must be some facts which show the court how an unauthorised entry was effected. Complainant could have left the window or door opened. In that case there would be no breaking in.

(c) Entering

This, as succinctly put by the learned author in the South African Criminal Law and Procedure, Volume II, Third Edition by JRL Milton at page 801 “is the essence of the offence, involving as it does the actual intrusion of a person of the offender into the privacy and sanctity of the home of another.

The accused was seen inside the shop. From this fact it can be inferred that he had successfully effected the entry into the shop. He was again identified to the complainant by the neighbours as the person who was inside the shop. The facts in this respect are clear and leave no doubt that entry was effected into that shop by the accused. RVB Adenhorst 1960 (3) SA 563 (A).

(d) Premises

As regards this element, there is satisfaction of the requirement in that the shop qualifies as “premises”. The shop is not regarded as any structure which is not a house. The shop must be permanent and immovable. This too is inferred from the use of the word “shop” The element was established. But it is helpful if the facts could spell out precisely what kind of structure was broken into. The proper description of the building should have been made in the statement by the complainant.

(e) Intent

The accused was found in possession of the items of property which were (or should have been) in the shop. If the facts clearly show that the owner had not given him permission to take those items, he must then have stolen them. There is still nothing in the facts which shows that the owner had not given him permission to take the property that was found in his possession. The complainant in her statement should have indicated that she had not given the accused or anyone the permission to take and remove the said property from her shop. There must be facts which show that the accused had actually taken the property from where it was originally kept and removed it to some other place.

Where the facts do not disclose the offence charged the accused should not be convicted. Some of the essential elements of the offence charged were not supported or established by the facts of this case. He is therefore found not guilty of H/B W/1 to steal and theft.

The conviction and sentence are set aside.



K.G/GUNI

JUDGE

2ND November, 01

Copy: Magistrate - Mafeteng
O/C Police - Mafeteng
O/C Prison - Mafeteng
O/C – Central Prison
CID - Police Headquarters
Director of Prisons
Director of Public Prosecutions
All Magistrates
All Public Prosecutions