CRI/A/59/78

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

1. MOTLATSI MANKOE — 1st Appellant
2. SHALE SEOEHLANA — 2nd Appellant

v

R E X — Respondent

J U D G M E N T

Delivered by the Honourable Mr Justice F.X. Rooney on the 4th day of February 1980

The two appellants were on the 7th June 1978 convicted of robbery and they were both sentenced to two years imprisonment.

On the 8th September 1976 the complainant was robbed of R500 at her home by two men who gained entry by posing as police officers. A third man remained outside in a vehicle with the registration number TVB 24673. The magistrate found that the first appellant was one of the two men who carried out the actual robbery and that the second appellant was the driver of the van who had associated himself with the two men who carried out the crime at the house.

The main arguments advanced on appeal related to the identification of the robbers. In his reasons for judgment the learned trial magistrate said:-

> "The Court convicted accused 2 and 3 on the strength of the evidence of the identifying witnesses and strong circumstantial evidence. The court found that in the case of accused 2 and 3 the parade was not only conducted properly, but there were absolutely no grounds to suspect collusion between the police holding the parade and the witnesses as the defence

counsel wanted/....

> counsel wanted the court to believe. The defence counsel wanted to make an issue of the fact that as P.W.6 failed to advise accused 2 and 3 that they were entitled to have a legal representative at the parade as required by the police form for that purpose, the identification of accused 2 and accused 3 was irregular and should be ignored. In my view this contention could not be sustained.
>
> Firstly, the form objected to was devised by the police for the convenience and guidance of those charged with the task of holding the identification parade; the procedure detailed in the form is not to be found anywhere in the law books on the subject of identification parades.
>
> Secondly, it was sufficient that the police officers adhered to the principles and guidelines they must observe when conducting identification parades. In the instant case, the requirements were met and accused 2 and 3 were picked by the witnesses in a fair parade."

It is clear from the above that the learned magistrate properly considered the evidence as to identification in the light of the criticisms levelled at the manner in which the parades were conducted but was nevertheless satisfied to accept this evidence as being reliable.

With the possible exception of Matau Morake, (P.W.5) who admitted she had poor eyesight, I am satisfied that the witnesses had a good opportunity to observe the robbers, who took both of them away in their van as if they were placing them under arrest. They subsequently dumped them on the road to Mafeteng. There is no reason for this Court, which has not had the advantage of hearing the evidence or seeing the witnesses, to depart from the finding of the magistrate in this regard in the absence of any indication that he misdirected himself in the evaluation of the evidence before him.

The second/....

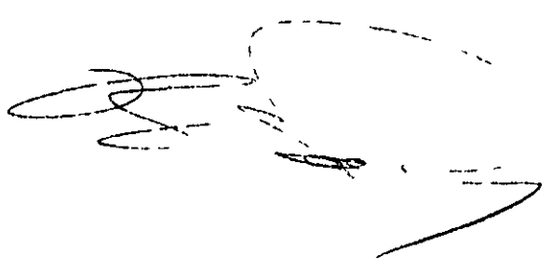
The second appellant admitted that he was at one time the owner of a vehicle with the registered number TVB 24673. Subsequently that vehicle was registered in Lesotho and the number plates had to be changed. The witnesses to the robbery noted that the vehicle used by the robbers bore the registration plate TVB 24673. It was a singular coincidence that a man, recognised at the scene of a robbery, should at one time have owned a vehicle which had the same number plate as that on the vehicle used in the robbery. This could only satisfactorily be explained on the basis that the former user of the plate was the man engaged in the robbery.

The magistrate found further corroberation of the testimony of the identifying witnesses in the evidence that the appellants were seen together at about the time of the robbery driving in a van registered number L.D. 39. This vehicle was recognised by the complainant as the one used in the robbery. The van was sold to Moeketsi Secbe by the second appellant in the presence of the first appellant on the same day as the robbery. Moeketsi received delivery of the van which cost him R400 on the 11th September.

Taken as a whole the evidence against the appellants was sufficient to justify the magistrate's finding that the case against them had been proved beyond all reasonable doubt. The appeal against conviction is dismissed.

In regard/....

In regard to sentence, I am unable to say that the magistrate did not exercise his discretion properly in sending both of the appellants to prison for two years. Although they were first offenders, the appellants used firearms to terrify and intimidate their victims, and gained entry into the house by a trick. The prevalence of robbery in this country is alarming and the courts must take note of that situation. The sentences imposed shall stand.



F.X. ROONEY
JUDGE

For Appellants: Mr Maqutu
For Respondent: Mr Peete