

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: A228/2012

DATE: 2 NOVEMBER 2012

In the matter between:

SIMPHIWE SOMPETA

Appellant

And

THE STATE

Respondent

J U D G M E N T

FOURIE. J:

The appellant appeared in the Regional Court, Cape Town, on two counts of theft of a motor vehicle; the first being in respect of a blue Ford Bantam bakkie with registration number C[...] and, the second, a white Nissan bakkie with registration number C[...]. His co-accused, who appeared with him, absconded during the trial and the matter proceeded in his absence. After hearing evidence, the regional magistrate found appellant guilty, as charged, and sentenced him to 5 years imprisonment on each count. He now appeals with the leave of the Court a *quo* against his convictions only.

It is not disputed that the two motor vehicles, referred to in counts 1 and 2, were stolen from their owners, as alleged in the charge sheet. It is common cause that on 29 June 2009, three members of the SAPS went to an address in Macassar, Khayelitsha, after receiving certain information. Two of them entered the premises, while the third, Constable Matakana parked the police vehicle in the street.

The police found that the backyard of the premises resembled what is commonly referred to as a “chop shop”, where motor vehicles are stripped and cut up. Three black men were busy stripping and cutting up a white Nissan bakkie. The police also found the rear part of a blue Ford Bantam bakkie, which had been totally stripped on the premises.

One of the three men wore a bright green T-shirt, one a black ANC T-shirt and the other a red T-shirt. The two men wearing the black and red T-shirts, respectively, ran away, but the police were able to detain the one in the green T-shirt. He was the co-accused who had absconded during the trial. The members of the police were able to identify the Nissan bakkie by means of its chassis number, while the Ford Bantam bakkie was identified by means of an identification number imprinted on the window of this vehicle. The police were able to establish through their motor vehicle recovery records that both the vehicles had been reported as stolen.

The presiding magistrate correctly identified the issues to be decided as follows: Firstly, whether the appellant was one of the three men found at the premises and, secondly, whether the Nissan bakkie and the part of the Ford Bantam bakkie found on the premises, were stolen from the complainants referred to in the charge sheet.

I should add that this is also the basis upon which the appeal is brought by appellant, namely, that the State has failed to link him to the theft of the two motor vehicles.

As far as the identity of the appellant is concerned, the two arresting officers who saw the man with the black ANC T-shirt run away, testified that soon thereafter the same man was brought back to the premises by their third colleague, Constable Matakana. The latter testified that he observed the appellant running from the premises and was informed by appellant that he was running away from the police. I should add that all three members of the police were in civilian clothes.

Constable Matakana then apprehended the appellant, whose T- shirt had oil stains and a spanner was found in the pocket of his pants. Also noteworthy is the fact that the appellant identified himself to the police by means of a false name.

The appellant's version as to how he was arrested by Constable Matakana while innocently walking in the street, was correctly rejected by the magistrate as highly improbable and false. In the result I am in agreement with the finding of the Court a quo that the State has proved beyond reasonable doubt that appellant was one of the three men found at the premises, busy cutting up the white Nissan bakkie.

As regards the identification of the motor vehicles, the magistrate, upon the completion of the State case, re-called Warrant Officer Aggenbach, in terms of section 186 of the Criminal Procedure Act. He then testified that he had personally identified the Nissan bakkie by means of its VIN identification number, which he had entered in the SAP13 register. He confiscated the Nissan vehicle and removed same to the motor vehicle recovery premises. In addition thereto, the defence admitted that this Nissan bakkie was identified as her property by the complainant referred to in count 2. To this I should add that the complainant testified that she identified this Nissan bakkie of hers at the police premises *inter alia* by means of a dent on the left front side which had been caused by a previous collision with a horse-drawn cart.

With regard to the blue Ford Bantam bakkie, referred to in count 1, the owner testified that, upon the request of the police, he visited the motor vehicle recovery premises where he found the rear part of his bakkie which had been severed from the front part thereof. He identified it as the rear part of his blue Ford Bantam bakkie, referred to in count 1, by means of the following:

1. He had previously removed DA Pools stickers from this part of the

vehicle, the imprints of which you could still see on the vehicle.

2. The rusted floor, which he had previously replaced.

3. The petrol cap with a white sticker; and

4. The plastic number plate which had been broken in two.

I should mention that this evidence regarding the identification of the vehicle part was not contested.

In addition Warrant Officer Aggenbach confirmed that the VIN identification number was found on the window, which was with the rear part of the blue Ford Bantam bakkie recovered in Khayelitsha, and that he personally entered details of this part in the relevant police register. It was then taken to the police motor vehicle recovery site where it was identified by the owner. He confirmed that it was the only blue part of a motor vehicle stored at these police premises.

On appeal the submission, on behalf of appellant, is that there has been insufficient identification of the vehicles as the registration numbers referred to in counts 1 and 2 could not be linked with the vehicles found. This may be so, but, in my view, the evidence of identification to which I have referred, overwhelmingly shows that the two vehicles recovered are indeed those stolen from the respective owners thereof.

As I have mentioned earlier, the evidence tendered by the complainants relating to the identification of the rear part of the blue Ford Bantam bakkie, and the white Nissan bakkie, went unchallenged. Viewed together with the objective evidence of identification, including the admission made by the defence in respect of the Nissan, the only probable conclusion that can be reached, in my view, is that the State has proved the issue of identification beyond reasonable doubt.

The appellant was one of the three men found in possession of the Nissan and the rear part of the Ford Bantam a few days after same had been stolen. He has failed to provide any convincing explanation for his possession of the stolen property. As I indicated earlier, his version as to how he happened to be on the scene, is clearly false.

In the result the appeal falls to be dismissed and the following order is made:

The appeal is dismissed and the appellant's conviction on counts 1 and 2 as well as the sentences imposed are confirmed.

I agree.

SAVAGE, AJ

It is so ordered.

FOURIE, J