

**IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)**

DATE: 21/2/2005

NOT REPORTABLE

Magistrate
POTCHEFSTROOM

Case No: 68/2004
Supreme Court Ref No: 5286

THE STATE V SIMON MALEFANE

REVIEW JUDGMENT

RANCHOD. AJ

The accused were convicted on 11 October 2004 in the Magistrates' Court, Fochville, on a charge of contravening Section 36 of Act 62 of 1955 (possession of suspected stolen property). Both were sentenced to a fine of R3 000,00 or 8 months imprisonment of which R2 000,00 or 5 months imprisonment was conditionally suspended.

On review, the magistrate was asked for reasons for finding accused no 2 guilty as well as comment as to whether accused no 2's evidence was not reasonably possibly true. The reasons and comment were provided and the matter was referred to the Director of Public Prosecutions for comment.

A helpful memorandum was received from the Director of Public Prosecutions' office for which I am grateful.

Two state witnesses, both police officers, testified on behalf of the state. It appears from the testimony of the second state witness, that accused 2 was arrested by the investigating officer, after he obtained information from accused 1, who had already been arrested.

Accused 1 was arrested by the first state witness while he and other unknown perpetrators, who fled the scene when they saw the police vehicle approaching, were busy transporting copper cable on a bakkie. At that stage the vehicle was stationary at the side of the road due to a problem with the vehicle's lights.

The vehicle that was used to transport the cable belonged to accused 2.

Accused 1, during his testimony, denied that accused 2 was involved in the collection and transportation of the cable.

Accused 2 denied during his testimony that he was involved in the crime and testified that one Thabiso borrowed his vehicle. He does not know accused 1 or the other perpetrators mentioned by accused 1.

With regard to accused 2, the state failed to prove important elements of the crime, of which the most important element is namely that accused 2 was in possession of the suspected stolen goods.

It is further unlikely that accused 1, who on his own version was arrested at the vehicle loaded with copper cable, would have protected accused 2 by testifying that he did not accompany them.

In my view the state failed to prove its case beyond reasonable doubt against accused 2. Accused 2's testimony is also reasonably possibly true.

It is therefore ordered that the conviction and sentence of accused 2 be set aside and that the conviction and sentence of accused 1 be and is hereby confirmed.

Any fine paid by accused no 2 is to be refunded to him.

N RANCHOD
ACTING JUDGE OF THE HIGH COURT

I agree.

J B SHONGWE
JUDGE OF THE HIGH COURT