

A387/2005

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

DATE.: 24/03/2005

THE MAGISTRATE
THABAMOOPO

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Case No.: C 1430/04
High Court Ref. No.: 176

THE STATE vs TSHOEKGOLO MAZWI MPHAHLELE

REVIEW JUDGMENT

BOTHA. J:

This matter was sent on special review because the mentor of the magistrate was of the view that the conviction was not in order.

The accused was convicted of the theft of trussels.

The state called two witnesses, the owner of a bar and a barman. The owner, mr Malete testified that he was called out and found two trussels next to a fence. They looked for the thief and saw a figure jumping over a fence.

Eventually they found the accused. He asked the accused what he wanted to do with the trussels. He said that he wanted to sell them as scrap metal. The accused admitted that he had removed the trussels. They found two trussels although the owner of the shop said that there had been four.

The barman, mr Sehlangu gave evidence that he saw the accused jumping the fence to the shop next door. He saw three trussels and they were on top of the fence, hanging on the fence.

The evidence of the accused was that he was inside the bar when some people told him that their trussels were missing. They assaulted him. Later the police arrested him.

The magistrate must obviously have rejected the version of the accused, and correctly so.

There are discrepancies between the state witnesses, but they are not serious. A significant omission in the state case is that the complainant was not called.

The state advocates have submitted a comprehensive memorandum in which they justify the conviction. I agree with their conclusion. In my view the evidence shows that trussels had been removed.

The evidence was that they were heavy. The accused was seen scaling the fence and he was caught. He admitted that he had removed the trussels and that he had wanted to sell them as scrap metal. That proved the offence.

In the result the following order is made:

1. The conviction and sentence are confirmed.

C BOTHA
JUDGE OF THE HIGH COURT

I agree:


J. N. RANCHOD
ACTING JUDGE OF THE HIGH COURT