**HAMPANDE v THE PEOPLE (1969) ZR 125 (CA)**

COURT OF APPEAL 15

SKINNER CJ, DOYLE JA, EVANS J

15th JULY 1969

**Flynote and Headnote**

[1]   **Criminal procedure - Charges - Duty of Prosecution to bring most serious charge warranted by facts.**

   When the evidence justifies a prosecution for aggravated robbery, 20 the prosecution must bring that charge rather than the lesser charge of robbery.

[2]   **Criminal procedure - Transfer of Proceedings - Magistrate's Duty to commit accused for trial to High Court when evidence discloses offence beyond magistrate's Jurisdiction.**25

     Where the evidence justified a charge of aggravated robbery (an offence reserved for trial by the High Court) but the prosecution had only charged robbery (which may be tried by a magistrate), the magistrate, after a preliminary inquiry, should have committed the accused for trial to the High Court. 30

Statute construed:

(1)   Penal Code (1965 Cap.6), s.264.

**Judgment**

**By The Court:** The appellant was charged with the offence of robbery contrary to section 262 of the Penal Code, and he was convicted on that offence by the Subordinate Court of the First Class for the Mazabuka 35 District, on the 7th March last. He was committed to the High Court for sentence, and on the 19th May he was sentenced to five years I.H.L. His appeal to this Court is against sentence only.

The Complainant was a woman. She was approached at the Kaleya Bridge by the appellant who had a knife in his hand. He demanded money, 40 and he said that he would kill her if she did not give it to him. The knife was open. He dragged her off the road and into the long grass. The

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BY THE COURT

complainant was wearing a chitenge, which the appellant cut with his knife, and he took the money from it. The appellant was a habitual criminal with sixteen previous convictions, a number of which were for dishonesty. We see no reason to interfere with the sentence passed by the 5 magistrate, and the appeal against sentence is dismissed.

There are, however, certain comments which the Court should make in relation to this case. [1] The prosecution elected to charge the appellant with the offence of robbery, contrary to section 262 of the Penal Code. The evidence disclosed at his trial showed that he was armed with a knife and 10 that he threatened the complainant with it. Such evidence would fully justify prosecution for the offence of aggravated robbery, contrary to section 264 of the Code. Aggravated robbery is becoming common in Zambia, and it must be stamped out. Consequently we fail to understand why the appellant was not charged with the more serious offence. It was the 15 duty of the prosecution to do so. [2] Upon the failure of the prosecution to charge such an offence the magistrate, once he had heard the evidence of the complainant, should have held a preliminary inquiry and committed the appellant for trial to the High Court. The offence of aggravated robbery is one which is reserved for trial by the High Court. It must have 20 been obvious to the magistrate that the evidence disclosed such an offence, and of course it must have been obvious to the prosecution that the evidence strongly supported the prosecution of such an offence. The proper thing for the prosecution to have done was to have charged the appellant with aggravated robbery. On their failure the magistrate should 25 have taken steps to rectify the position. If the appellant had come before the High Court charged with aggravated robbery, he would have got a substantially more severe sentence. However, he did not appear before the High Court charged with aggravated robbery. There is nothing we can do about it, but it should be born in mind by everyone charged 30 with the administration of justice that aggravated robbery is common in Zambia, that it is an offence which must be stamped out, and that it calls for severe sentences.

There is one more matter to which I should refer. If it were the intension of the prosecution to save time by putting the appellant on 35 trial for the lesser offence in order that he might appear before the magistrate's court, we regard such a practice as wrong.

*Appeal dismissed*

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