

FRED CHINYAMA AND GODFREY MANDA v THE PEOPLE (1995) S.J.

SUPREME COURT
NGULUBE, C.J., CHIRWA AND MUZYAMBA, J.J.S.
5TH DECEMBER, 1995
APPEAL NO. 157/95

Flynote

Aggravated robbery - Fifteen years' imprisonment - Identification of the appellants

Headnote

The appellants were sentenced to 15 years for aggravated robbery while acting together with three other persons and also while armed with what turned out later to be a toy pistol. The appellants appealed.

Held:

(i) The appellants were properly tried and convicted

For the appellants: Mr Kabonga, Director of Legal Aid
For the Respondents: Mrs Sokoni, Acting Senior State Advocate

Judgement

NGULUBE,C.J.: delivered the judgement of the court.

The appellants were sentenced to 15 years for aggravated robbery while acting together with three other persons and also while armed with what turned out later to be a toy pistol. The particulars were to the effect that on 25th June 1992, at Ndola they robbed PW1. The evidence established beyond any doubt that on the morning of that day between 0900 hours and 1000 hours in the morning, that it in broad day light, two men pretending to be from ZESCO approached PW1 - an old lady - and said they wanted to read the metre. They were allowed to enter at the gate and she walked with them into the house upto the place where the metre is where they pretended to read it.

There upon they whipped out this two pistol and demanded money. PW1 was with some visitors and all these ladies were harassed for long time. Three other individuals came and joined the first two. Then later on PW2 the son of PW1 arrived at the house with some of his workers and heard his mother shouting that there were thieves. According to the evidence of PW2, he fought in turn first with one appellant then with the next before the appellants fled.

We heard the grounds of appeal in this matter, in which the learned Director has tried his best in a very difficult case. The sole issue before the learned trial Judge concerned the identification of the appellants as two of the robbers. The judge correctly directed himself on this point and what was required was to make sure that the wrong persons are not convicted of offences. The judge found the identification to have been very good. We are of course alive to the submission that the parade was not properly organised. Indeed we find it intriguing

that a parade was conducted at all, especially that the evidence particularly that of PW2 showed that the first appellant was chased into someone else's house where they found him hiding under the bed. The other appellant was found in a house in the neighbourhood subsequently. The sole question which the court had to answer was whether the opportunity available to the witnesses was good or not. The old lady PW1 demonstrated that she had reasonably good eye sight. She saw the appellants when there was no stress whatsoever until the attack subsequently. This was not a case of a single identification witness. In other words, the evidence of PW1 and that of PW2 strengthens each other.

We can not see that any of the grounds advanced by the appellants can assist them. We agree with Mrs Sokoni that the evidence in this case was very strong. The appellants must go and service their sentences. The appeals are dismissed.

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