

IN THE SUPREME COURT OF ZAMBIA

SCZ Appeal No. 147/2004

HOLDEN AT KABWE

(Criminal Jurisdiction)

BETWEEN:

RODGERS BANDA

V

THE PEOPLE

Coram: Sakala, CJ, Chibesakunda, JS and Kabalata, AJS.

on 8th and 10th April, 2008.

For the Appellants: Mr. A. C. Nkausu, Director of Legal Aid

For the State : Mr. P. Mutale, Principal State Advocate

JUDGMENT

Kabalata, AJS, delivered the judgement of the court.

This is an appeal against sentence only.

The Appellant was convicted by the High Court of **Aggravated Robbery** contrary to **Section 294(1) of the Penal Code** and sentenced to 20 years imprisonment with hard labour with effect from 5th January, 2004.

The particulars of offence alleged that **Rodgers Banda**, with two others, on 5th day December, 2003, at Lusaka jointly and whilst acting together and whilst armed, did steal from Dennis Muleya one motor vehicle, namely, Toyota DX Registration No. AAT 8276 valued at K7,650,000 and at or immediately before the time of stealing did threaten to use violence on Dennis Muleya in order to retain or overcome resistance to the said property being stolen.

There is only one ground of appeal and it is that the trial Judge erred in principle of sentencing of first offenders.

In his written submissions before the court, Mr. Nkausu, the learned Director of Legal Aid, submits that as a first offender, the Appellant is entitled to leniency and on a charge of aggravated robbery, a sentence of 15 years imprisonment with hard labour would have been sufficient punishment since most of the stolen property was recovered. He contends that a sentence of 20 years imprisonment with hard labour is wrong in principle and excessive for a first offender. He urges us to set it aside for one which shall reflect exercise of leniency. He suggested a sentence of 15 years as being sufficient both to teach Appellant a lesson and those contemplating to commit the offence charged for the first time.

Mr. Mutale, the learned Principal State Advocate, did not make any submission apart from saying that he was leaving it to court to decide.

We have carefully considered the written and oral submissions of the learned Director of Legal Aid and the circumstances of this case.

We entirely agree with Mr. Nkausu that as a first offender, the Appellant is quite entitled to leniency when the court is considering sentence. Indeed, we find that the learned trial Judge was alive to this basic principle of sentencing first offenders.

In this particular case, the complainant was robbed of his car after being hired by two customers, one of whom was the Appellant. When they reached their destination, the Appellant and his collaborator strangled him with a piece of wire around his neck and went off with his car.

In these circumstances, can it be seriously argued that a sentence of 20 years imprisonment with hard labour was excessive?

On our part, we wish to observe that taxi drivers offer an essential service to members of the public at any single time including during awkward times, like late at night. As such, they need to be protected from people like the Appellant

and indeed by others who contemplate conducting themselves in similar fashion.

The sentence of 20 years imprisonment with hard labour, therefore, does not come to us with a sense of shock. In our view, those convicted of this type of offence and in the circumstances such as these cannot expect the leniency normally afforded to first offenders.

We find no merit in this appeal and it is, therefore, dismissed.



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E. L. SAKALA
CHIEF JUSTICE



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L. P. CHIBESAKUNDA
SUPREME COURT JUDGE



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T. A. KABALATA
AG/SUPREME COURT JUDGE