

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT KABWE
(CRIMINAL JURISDICTION)

SCZ APPEAL NO.186/ 2003

FRANCIS YAMIKANI BANDA

APPELLANT

VS

THE PEOPLE

RESPONDENT

Coram: Lewanika, DCJ, Chibesakunda and Chitengi JJS
4th November, 2003.

For the Appellant: In Person.

For the Respondent: Mrs. Esther Manase. Chipande, Deputy Chief
State Advocate.

J U D G M E N T

D.M. Lewanika, DCJ, delivered the Judgment of the Court

The Appellant had been convicted of the offence of aggravated robbery contrary to Section 294(1) of the Penal Code. The particulars of the offence are that on 27th May 2001, at Kabwe, in the Kabwe District of the Central Province of the Republic of Zambia, jointly and whilst acting together with another person unknown and being armed with one Toy Gun did rob Stephen Mutima of one motor vehicle namely Toyota Corolla Registration Number AAV 9222 DX and one Car Radio Cassette all valued at K10,500,000 and at or immediately before or after the time of such stealing did use or threatened to use actual violence against Stephen Mutima in order to obtain or retain the said property.

The Appellant was sentenced to a term of 20 years Imprisonment with Hard Labour and he appeals to this court against sentence only.

The facts of the case in brief before the learned trial judge were that on the date in question, the complainant who was a Taxi Driver was driving his vehicle in the town centre in Kabwe. He was stopped by the Appellant and another who hired him to transport them to a place called Mutwe wa Nsofu which is off the Kabwe to Lusaka road. As they turned off the main road the complainant was held from the back by a rope which was put around his neck and was pulled backward and was told to surrender the car keys. The complainant resisted and a gun was produced and was threatened that he would be shot. The complainant struggled, fortunately, it turned out that the gun was not a real firearm. The complainant managed to free himself from the vehicle. The two assailants drove off with the vehicle. It was driven to Chibombo where it was recovered on the following day and the Appellant was arrested on the same day.

We have considered the submissions of the Appellant against the sentence imposed on him. We have also perused the record and taken note of the mitigation that was advanced before the trial judge. But considering the circumstances in which the offence was committed, the violence which was

perpetrated on the complainant and the use of a fake firearm, theft of the motor vehicle and the prevalence of these offences, we cannot say that a sentence of 20 years Imprisonment with Hard Labour was wrong in principle or that it comes to us with a sense of shock. We are not inclined to disturb the sentence and we find no merit in the appeal against sentence which we dismiss accordingly.

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D. M. Lewanika,
DEPUTY CHIEF JUSTICE.

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L. P. Chibesakunda
SUPREME COURT JUDGE

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P. Chitengi
SUPREME COURT JUDGE