

MWALE v THE PEOPLE (1965) ZR 156 (CA)

COURT OF APPEAL

DENNISON Acting CJ, DOYLE JA, RAMSAY J

25th November 1965

Flynote

Criminal procedure - Joinder of offences for trial - time separating commission of offences:

Headnote

It is improper to join in one information offences separated by a considerable period of time.

The appellant in person

Shoniwa, State Advocate for the respondent

Judgment

Doyle JA: The appellant was convicted on three charges: indecent assault, assault with intent to commit a felony, namely rape, and rape. He was sentenced on these charges respectively to cumulative terms of imprisonment with hard labour of three years, three years and ten years. He was also sentenced on the charge of rape to twelve strokes. He appeals to this court against these sentence. The first offence was committed some two and a half months before the others. The other two offences were committed on the same night but in respect of different women in premises some 250 yards apart. In each case the appellant entered a locked flat, in each case he assaulted a sleeping woman and in the cases of assault with intent and rape he used considerable force in trying to prevent the victims from screaming. Sexual offences are on the increase. These offences were not the result of any sudden temptation or any fancied enticement from the victims. They were deliberately conceived and deliberately carried out. At first sight cumulative sentences of sixteen years and twelve strokes may seem severe, but in the light of the facts and the necessity to discourage such offences they do not affect this court with any sense of shock. The appeal is dismissed.

Although not relevant to the present appeal against sentence, the court would like to draw attention to two matters. The offence of rape was charged as being contrary to section 114 of the Penal Code (Cap.6). That section deals with the punishment for rape; the correct section is section 113 and this is also the section set out in the Criminal Procedure Code (Cap.7). As already stated the offence of indecent assault was committed some two and a half months before the other offences. The court must not be taken as approving the joinder in one information of these offences separated by this considerable period of time. *Appeal dismissed.*