

ALEX MWEWA v THE PEOPLE (1970) ZR 63 (CA)

COURT OF APPEAL

DOYLE CJ, PICKETT JA AND MAGNUS J

20th FEBRUARY 1970 15

Appeal No. 80 of 1969

Flynote

Criminal law and procedure - Aggravated robbery - Accused charged of lesser offence of robbery whereas apparent, crime was aggravated robbery - Procedure to be taken by magistrate in such circumstances - Duty of 20 police.

Headnote

The appellant was charged with robbery whereas he should have been charged with aggravated robbery. The magistrate recognised this but continued with the charge as laid. The police had laid a lesser offence in order to give the magistrate jurisdiction. 25

Held:

(i) Where the crime is aggravated robbery the magistrate should transform the trial into committal proceedings and the summary proceedings should cease.

(ii) It is improper of the police to lay a lesser charge in order to give 30 jurisdiction to a subordinate court. Facts which amount to aggravated robbery should be so charged.

Judgment

Doyle CJ: delivered the judgment of the court.

The appellant was charged with robbery. He should, of course, have been charged with aggravated robbery. The learned magistrate recognised 35 that this was the case but he continued with the case as laid. This court has laid down on numerous occasions that it is improper of the police to lay the lesser charge in order to give jurisdiction to a subordinate court. We hope that it will eventually get into the heads of the police that facts which amount to aggravated robbery should be so charged. Where a crime 40 is plainly aggravated robbery, the magistrate also should transform the trial into committal proceedings and the summary proceedings should not continue. But in the first place the police should not take short cuts. It will not work. There is in the record detailed evidence that the appellant, together with other persons, stopped an old woman and one of the party 45

1970 ZR p64

DOYLE CJ

having stated that such persons usually carry moneys, they then proceeded, by one of them, to take money from her person. The accused and possibly others then proceeded to assault her sexually. The accused had said to the police in effect, "I had no intention of robbing her, merely to 5 sexually assault her." This is a defence of no merit whatever in the circumstances. It is extremely fortunate that the appellant has also appealed against sentence. The sentence of eighteen months by the magistrate is a totally inadequate sentence. We dismiss the appeal against conviction.

We allow the appeal against sentence. The magistrate could only 10 have given the appellant three years because that was the limit of his jurisdiction. We think he should have given the three years. We quash the sentence of eighteen months, and substitute a sentence of three years' imprisonment with hard labour. Appellant is extremely lucky we have no power to give more.

15 Appeal dismissed

1970 ZR p64