

HOLDEN AT NDOLA

(Criminal Jurisdiction)

**B E T W E E N:**

**CHISUMPA LIANDISHA**

**APPELLANT**

**AND**

**THE PEOPLE**

**RESPONDENT**



**CORAM: Mchenga DJP, Chishimba and Majula, JJA**

**On 18<sup>th</sup> February 2020 and 28<sup>th</sup> February 2020**

**For the Appellants: Mr. K. Muzenga- Deputy Director, Legal Aid Board**

**For the Respondent: Mr. P. Mutale- Deputy Chief State Advocate, National Prosecutions Authority.**

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## **J U D G M E N T**

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**Mchenga, DJP, delivered the Judgment of the Court.**

**Cases referred to:**

- 1.Mwape v The People [1976] Z.R. 160
- 2.Constain Hamwenda v The People [1980] Z.R. 63
- 3.Amos Simemba v The People CAZ APPEAL 99/2019

**Legislation referred to:**

- 1.The Penal Code, Chapter 87 of the Laws of Zambia

## **Background**

1. This appeal originates from the Judgment of the High Court (Maka-Phiri J.), delivered in Livingstone on 6<sup>th</sup> June 2016.
2. The appellant initially appeared before that court on an information containing one count of the offence of aggravated robbery contrary to **Section 294 (1) of the Penal Code**. The information was then amended and the charge substituted, with a lesser offence of aggravated assault with intent to steal, contrary to **Section 295 of the Penal Code**. He admitted the substituted charge.
3. Following his admission of the substituted charge, a statement of facts was read out and the appellant did not dispute its contents. He was then convicted and sentenced to 10 years imprisonment with hard labour.

## **Grounds of appeal**

4. The sole ground of appeal, advanced by Mr. Muzenga, on behalf of the appellant, is that the learned trial

judge misdirected herself when she convicted him for the offence of aggravated assault with intent to steal, when the statement of facts did not set out the role that he played in the commission of the offence.

5. Mr. Mutale, who appeared on behalf of the State, does not support the conviction.

**Amended charge and statement of offence**

6. The allegation in the amended charge was that on 24<sup>th</sup> October 2018, at Livingstone, the appellant, jointly and whilst acting together with others, and while armed with offensive weapons assaulted Robson Moono with intent to steal his motor vehicle, cell phone and money.

7. According to the undisputed facts, on 24<sup>th</sup> October 2018, around 23:00 hrs, Robson Moono drove out of Maramba Clinic after receiving treatment. As he attempted to join the main road, he was stopped by one Elias Tebe a person well known to his passenger.

He asked to be taken to a specified place and Robson Moono agreed.

8. Elias Tebe sat in the front passenger seat and after they had just driven for a short distance, produced a pepper spray canister, which he discharged in Robson Moono's face. Robson Moono stopped the car, and two men who were lying in wait, in the area, joined Elias Tebe in beating and overpowering him. They removed him from the car drove off in it.

9. The following day, the police recovered Robson Moono's abandoned motor vehicle.

**Did facts disclose the offence of aggravated assault with intent to steal?**

10. Though Mr. Muzenga's focus was on the appellant not being mentioned in the statement of facts, our view is that the issue for determination in this case, is whether the statement of facts disclosed the offence of aggravated assault with intent to steal.

11. The offence of aggravated assault with intent to steal is set out in **section 295 of the Penal Code.**

It reads as follows:

**"Any person who, being armed with any offensive weapon or instrument, or being together with one person or more, assaults any person with intent to steal anything, is guilty of a felony and is liable on conviction to imprisonment for a period (notwithstanding subsection (2) of section twenty-six) of not less than ten years and not exceeding twenty years."**

12. According to the provision, the offence is committed when a person who is armed with an offensive weapon, assaults another with the intention to steal, but fails to steal. In this case, the facts indicate that Robson Moono's car was actually stolen after he was pepper sprayed but it was later abandoned.

13. **Section 294 of the Penal Code**, which sets out the offence of aggravated robbery, provides as follows:

**(1) Any person who, being armed with any offensive weapon or instrument, or being together with one person**

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