

THE PEOPLE v ALEX MUHAU KALANDA (1981) Z.R. 308 (H.C.)

HIGH
MOODLEY,
22ND JULY, 1981
(HNR/337/81)

COURT

J.

Flynote

Criminal law and procedure - Conviction - Previous convictions - Denial of by accused person - Whether trial magistrate should afford prosecution opportunity to prove previous conviction beyond reasonable doubt.

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Headnote

The case came to the High Court for purposes of confirming a sentence of nine months' imprisonment with hard labour imposed upon the accused person by a magistrate of the third class, Chingola, after he had convicted the accused of unlawful wounding by using a knife.

The record showed that the prosecution had indicated to the learned trial magistrate that the accused had one previous conviction for a similar offence. The accused denied the previous conviction and thereupon the learned magistrate decided to treat the accused as a first offender and accordingly sentenced him to nine months imprisonment with hard labour,

Held:

- (i) The learned magistrate erred in law in treating the accused as a first offender when there was a submission before the court by the prosecution that the accused had a previous conviction.
- (ii) In spite of the accused's denial of the previous conviction, the learned magistrate should have offered the prosecution an opportunity to prove the previous conviction beyond reasonable doubt.
- (iii) Once information concerning a previous conviction has been brought to the notice of the court when sentence is being considered, then the court is duty bound to hear evidence concerning the previous conviction in order to make a finding as to whether or not the accused person has had a previous conviction in respect of a relevant offence.

Legislation referred to:

Penal Code, Cap. 146, a. 232 (a).

Criminal Procedure Code, Cap. 160, s. 338 (1) (a) (iv).

Judgment

MOODLEY, J.:

This case came to the High Court for purposes of confirming a sentence of nine months imprisonment with hard labour imposed upon the accused person by magistrate of the third class,

Chingola, after he had convicted the accused of unlawful wounding contrary to section 232 (a) of the Penal Code, Cap. 146. I have had occasion to study the case record and in the light of the evidence disclosed at the trial particularly in relation to the offence charged, this court is of the view that sentence of nine months imprisonment with hard labour for an offence of unlawful wounding where a knife was used was far too lenient in the circumstances. The record shows that the prosecution had indicated to the learned trial magistrate that the accused had one previous conviction for a similar offence. The accused denied the previous conviction and thereupon the learned magistrate decided to treat the accused as a first offender and accordingly sentenced him to nine months imprisonment with hard labour.

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The learned magistrate erred in law in treating the accused as first offender when there was a submission before the Court by the prosecution that the accused had a previous conviction. In spite of the accused's denial of the previous conviction, the learned magistrate should have afforded the prosecution an opportunity to prove the previous conviction beyond reasonable doubt. Once information concerning a previous conviction has been brought to the notice of the Court when sentence was being considered, then the Court is duty bound to hear evidence concerning the previous conviction in order to make a finding as to whether or not the accused person has had a previous conviction in respect of a relevant offence.

Thus in the exercise of my powers of review under section 338 (1) (a) (iv), of the Criminal Procedure Code, Cap. 160, I hereby quash the the sentence of nine months imprisonment with hard labour imposed in this case and direct that the accused be taken before the magistrate who dealt with this case at the Subordinate Court, Chingola, who should hear evidence and make a finding as to whether the accused person had a relevant previous conviction and thereafter impose a sentence consistence with the law.

Sentence quashed
