

JONAS NKUMBWA v THE PEOPLE (1983) Z.R. 103 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER AND MUWO, J.J.S.
13TH SEPTEMBER...,1983
(S.C.Z. JUDGMENT NO.10 OF 1983)
APPEAL NO.8 OF 1983

Flynote

Criminal Law and Procedure - Recent possession - Inference therefrom.

Criminal law and Procedure - Offence - Armed aggravated robbery - Firearms - Necessity for.

Sentence - Deterrent sentences - Imposition on first offenders - Entitlement to leniency.

Headnote

The appellant was convicted of armed aggravated robbery on the basis of recent possession and sentenced to death, following a robbery staged by persons in police and army uniforms. He was found in possession of the stolen property and an airgun the day after the robbery. He appealed against both conviction and sentence.

Held:

(i) Possession of stolen property simplicitor, does not inevitably lead to an inference that the appellant participated in the robbery, unless possession is so recent that there could have been no opportunity for the transfer of the property from another person into the appellants hands.

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(ii) It is unsafe to uphold a conviction on a charge of armed aggravated robbery where there is no direct evidence of the use of firearms.

(iii) Due to the frequency of robberies perpetrated by persons disguised as policemen and army personnel, it is necessary to impose deterrent sentences, although the appellant being a first offender was entitled to leniency.

For the appellant: R.O. Okafor Senior Legal Aid Counsel.

For the respondent: J.M. Mwanachongo State Advocate.

Judgment

NGULUBE, D.C.J.: delivered the judgment of the court.

The appellant was sentenced to death consequence of his conviction on charge of aggravated robbery involving the use of a firearm.

The facts of the case were that on 20th September, 1979, a group of five bandits staged a robbery at the complainant's house. Some were dressed in police uniforms while the rest were wearing army uniforms. After holding up and generally terrorising the complainants and their servants, the men made off with a quantity of property and cash as well as a vehicle belonging to the complainants. The men were alleged to have been armed with guns.

The record shows that none of the eye witnesses could identify the appellant. There was evidence, however, that as a result of a report received by the police the appellant was apprehended on 21st September, 1979, that is to say, the very next day after the robbery. The appellant led the police to his house and, following upon a search thereof, the appellant was found to be in possession of an air gun, bed sheets and other articles which had been stolen from the complainants during the robbery. The defence by the appellant was complete denial of any involvement and a bold denial that any property was found in his house.

The contention at the trial and indeed on appeal to this court has been that, before property can be said to have been found in his house the investigating officers should have prepared a list which should have been signed by the appellant. We have no hesitation in saying that there is no rule of law or of practice to the effect suggested by the appellant. The learned trial judge properly considered the matter to be one of credibility as between the police officer and the appellant. He believed the former and no ground has been advanced to fault this determination. Thus the only evidence linking the appellant with the commission of the offence was his possession of stolen property less than twenty-four hours after the event.

In his additional grounds of appeal the appellant submits on the authority of our decisions, that the possession of stolen property simpliciter does not inevitably lead to an inference that he had participated in the robbery. While we agree with that basic proposition, we are of the view, nonetheless, that the possession in this case was so recent that there could have been no opportunity for the transfer of the property from

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another person to the appellant. From the circumstances of this case we are satisfied that the learned trial judge had come to the proper conclusion and that the appellant was therefore one of the robbers involved in this case.

As we have already stated, there is an allegation that two of the robbers were armed with firearms. There was no direct evidence of the use of firearms as they had not been fired nor were they subsequently found and tested to be firearms within the meaning of the Firearms Act. As Mr Mwanachongo properly observes, they may have been imitations. In the premises we find that it would be unsafe to uphold a conviction on charge of armed aggravated robbery. We quash the conviction for that offence and in its place we substitute a conviction for ordinary aggravated robbery. It follows that the death sentence must be set aside and that we must now impose an appropriate sentence.

The robbery in this case was staged by a large group of men and in particular, any sentence to be passed should reject the disapproval of society of the use, by bandits, of police and army uniforms.

The society is entitled to rely on the confidence and protection that can be expected when dealing with police and army personnel. But all too frequently cases come up where bandits have staged robberies disguised as policemen, or as soldiers. We intend to deal harshly with bandits who malice use of uniforms in this manner. However, since the appellant is the first such example we propose to deal somewhat leniently with him. The sentence will nonetheless be somewhat greater than the minimum. In all the circumstances of this case we impose a sentence of 18 years imprisonment with hard labour with effect from 21st September, 1979 the date when the appellant was taken into custody.

Appeal allowed in part
