

IN THE SUPREME COURT OF ZAMBIA

SCZ Appeal No. 53 of 1991

HOLDEN AT KABWE

(Criminal Jurisdiction)

FRED BHALYA

Appellant

VS

THE PEOPLE

Respondent

CORAM: Ngulube, D.C.J., Sakala and Chaila JJ.S.

6th August, 1991.

For the appellant : In person

For the respondent: Mr. G.S. Phiri, Director of Public Prosecutions

J U D G M E N T

Chaila, J.S. delivered the judgment of the court.

The appellant was convicted of the offence of aggravated robbery contrary to Section 294 (1) of the Penal Code. The particulars were that, he, with another person unknown used violence in stealing 1 x 25Kg bag of unshelled ground nuts valued at K150.00 from Idah kabwe. He was sentenced to 15 years imprisonment with hard labour. He now appeals against conviction.

The brief facts of the case were that on the 10th of May 1989 in Mufulira on the Copperbelt, the complainant PW1 went with her friend around 7 hours to the fields to dig ground nuts. They filled a 25kg bag and then decided to dig some sweet potatoes. As they were looking for sweet potatoes the complainant saw the appellant and his friend approaching. The accused had in his hands a slasher which was sharpened at the end whilst his friend had a panga. The complainant knew the appellant before this incident as they had stayed in the same neighbourhood for about seven years. The appellant shouted to them "you will die if you have not seen

/2...people being

people being killed." PW1 and her friend ran away in the bush leaving the bag of ground nuts behind. Then they joined a path which was used by people going to the fields. They were stopped by some people who inquired as to what had happened. They explained what had happened. The complainant and her friend were escorted back to the field and they looked for the appellant and his friend in the bush but did not find them. The complainant looked for the bag of ground nuts which she had left behind when she ran away and it was missing. Then they went home and made a report to the Ward Chairman. As they were making the report to the Chairman, a young girl came to inform them that a certain lady had bought ground nuts from the appellant. The Chairman gave them one vigilante to go and check on the lady who had bought some ground nuts. They found the bag of ground nuts with that lady. She was able to identify the bag as there were some fabric missing from the top and it had a hole at the corner caused by rats. The bag and the lady were taken to the Chairman's office. The Chairman sent vigilantes to look for the appellant in the compound. They found the appellant who was later taken to the police station with the ground nuts.

The appellant gave a story in the lower court that the ground nuts in question were given to him by the mother. He also called the mother who testified on his behalf.

The learned trial judge considered the evidence of the prosecution together with the evidence adduced by the appellant and his witnesses and the judge decided the matter rested on credibility, and he decided to believe the evidence given by the prosecution and he convicted the appellant of the offence.

The appellant has advanced various grounds of appeal. The first ground is that he had known the complainant PW1 and PW3 for a long time and he could not attack them in broad day light. He has further argued that the complainant's field was in the opposite and different direction to their field where he had gone that day. He has further on argued that the weapons mentioned were never found neither at his home, police station

or anywhere. The main ground is that the ground nuts which he sold were part of the 50kg sack which came from the mother. He has further argued that all his sacks were stained with charcoal and that no sack was identified. He has maintained that the defence witnesses gave proper evidence and should have not been easily dismissed by the learned trial judge. The appellant has complained about the evidence of PW1 who had said she knew the two assailants but later on testified that she could only recognise the appellant. He has argued that her identification was not a proper one. He has argued that since he knew the complainant and her friend, he could not attack them during broad day light and that he was wrongly implicated. He has complained that the learned trial judge misdirected himself when he dismissed his evidence.

The learned Director of Public Prosecutions has supported the conviction. He has argued that the evidence adduced against the appellant was overwhelming and that the learned trial judge correctly convicted the appellant. The learned Director of Public Prosecutions has referred to the evidence of PW2 the lady who had bought the ground nuts from the appellant. The bag found on PW2 was identified and recognised by PW1 as her bag and she gave reasons for doing so and the learned Director of Public Prosecutions has urged the court to dismiss the appellant's appeal.

We have considered the evidence on record and the submissions by the learned Director of Public Prosecutions. The evidence shows that when the appellant attacked the complainant it was done during broad day light. The evidence also shows that the appellant knew the complainant. The appellant in his evidence did admit that the complainant knew him. There is also evidence of the Chairman who was approached by the complainant. The Chairman's evidence showed that when the complainant reported the matter to him, PW1 mentioned that they had been attacked by Bwalya. The Chairman told the complainant and her friend to go home since she knew Bwalya and that he would look for him. The Chairman sent some vigilantes who later found the appellant. The appellant was later connected to the offence by the evidence of PW2 who said that she had bought the ground nuts from

the accused. The ground nuts were identified in the sack which was recognised by PW1 as her bag. The evidence shows the evidence of the Chairman that the appellant was involved in this matter. The judge considered the evidence of the prosecution witnesses and the evidence of the appellant and his witnesses and accepted the prosecution's case. We do not see where the judge misdirected himself when he resolved the matter on credibility. The complainant and her friend knew the appellant very well. The offence took place during broad day light and the question of mistaken identity could not arise; particularly when the same ground nuts were proved to have been sold to PW2 by the appellant. The arguments put forward about mistaken identity and wrong implication cannot therefore succeed. The appeal against conviction is therefore dismissed. There can never be an appeal against a mandatory minimum sentence.

.....
M.S. NGULUBE
DEPUTY CHIEF JUSTICE

.....
E.L. SAKALA
SUPREME COURT JUDGE

.....
M.S. CHAILA
SUPREME COURT JUDGE