

IN THE SUPREME COURT OF ZAMBIA

APPEALS NO. 87 A,B& C of 1993

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

DANNY KATONGO SINYINDA

PETER MULENGA

KWALOBOTA SILILO

Appellants

Vs

THE PEOPLE

Respondent.

Coram: Sakala, Chaila and Musumali, JJ.S

24th August, 1993.

Mr. S.M. Chirambo, Senior Legal Aid Counsel, for the appellants.

Mr. W. Wangor, Principal State Advocate, for the State.

J U D G M E N T

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

The three appellants were jointly charged with a co-accused with the offence of aggravated robbery contrary to Section 294(1) of the Penal Code Cap 146 of the laws of Zambia.

The particulars of the offence alleged that, the three appellants and a co-accused, on 1st January 1988, at Lusaka, in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, robbed Frances F. Leggie of 5 pairs shoes, 1 motor vehicle namely Isuzu, 4 hand gloves, 2 pairs blankets, 10 skippers, 9 pair dresses, 9 skirts, 1 jersey, 4 slumber jackets, 2 leather coats, 7 bathing towels, 3 trousers, 4 pitticoats, 9 blouses, 3 top dresses, 6 pillow cases, 13 table clothes, 3 manflos, 5 bed sheets, 7 pants, 1 handertone machine, 4 pairs socks, 7 tights, 1 plastic water bottle, 1 cassette, 16 belts 1 binicular, 4 pairs hand bags, 1 pair coat, K600.00 cash, 9 dollars cash, 1 camera, hand stocks all valued at K1, 980,900.00 and used violence at the time of the robbery.

The co-accused had his trial discontinued after the court realised that no plea in respect of him had been taken, an order was subsequently made that he be tried separately. Following upon their convictions the appellants were each sentenced to 18 years imprisonment with hard labour.

Briefly, the case for the prosecution was that, the complainant was at 01.30 hours on 1st January, 1988 awakened by voices saying, "do not shout", "do not make noise" or we will kill you". The intruders who had entered her house through the back door tied both her hands using an electric cable after they had removed her wrist watch. At the time all this was happening, the security lights were on and according to her evidence, the security lights illuminated the house thereby making her able to see her assailants. She was hit on the face with a wheel spanner and the assailants demanded money from her. When she said that the money was in the office, they dragged her through the verandah via the kitchen where she switched on the lights and saw her four assailants clearly. The four of them collected K600 from the office and one of them went round all the rooms and switched on all the lights in the house. The complainant was subsequently taken to the television room where she was made to sit down while the first appellant kept guard and others were at the same time collecting the household items the subject of the charge. According to the complainant, her assailants were in the house for about two hours. Later after they finished, she heard the vehicle outside being driven off. Subsequently, she sounded the alarm! her Cook came around and untied her; the matter was then reported to the police.

PW3 testified that around 04.00 hours on 2nd January, 1988 while on guard duties at his uncle's garage, the second appellant brought an Isuzu vanette that had no windscreen allegedly stolen from his house when the vehicle had been packed there. The second appellant left this vehicle at this garage.

PW4, a police officer, testified that on 2nd January, 1988, on information received, he apprehended the three appellants and the other accused with the items identified to have been stolen from the complainant the previous night.

PW5, also a police officer, was led to the recovery of the stolen motor vehicle by the 2nd appellant.

In their defence, all the appellants remained silent which they were entitled to do. The court found that PW1, the complainant had been robbed on the night in question. The court also found that the complainant had adequate opportunity of seeing clearly her assailants under circumstances where the whole house was lit. The court also found that the appellants were found with stolen property the very day after the property had been stolen. The court found that the second appellant led the police to Kaunda Square where the stolen vanette was recovered. She was satisfied that the question of mistaken identification did not arise, consequently, she convicted all the three appellants.

On behalf of the appellants, Mr. Chirambo has filed two grounds of appeal. The first one was that the identification of the appellants was irregular, submitting that in the absence of an identification parade at the police station, the learned trial judge misdirected herself in accepting the evidence of identification by PW1, the complainant. According to counsel, the complainant must have been taken to where the appellants were kept rendering the identification at the police in the absence of a parade irregular. The second ground of appeal was that the sentence of 18 years imprisonment with hard labour was too severe.

We have very carefully examined the evidence on record and the judgment of the learned trial judge. From the evidence adduced, it is quite clear that the complainant had ample opportunity of watching her assailants who had taken complete control of the whole house for

about two hours and identified them immediately upon seeing them at the police station. In addition the appellants were apprehended few hours after the robbery while in possession of items the subject of the robbery. The vanette stolen at the scene was recovered some hours after the robbery with the assistance of the second appellant.

We agree that there was no identification parade conducted at the police station. But the circumstances of this case did not warrant a parade and its absence was not fatal to the prosecution case. The evidence in support of the conviction was overwhelming. The appeals against convictions are dismissed.

As to sentence, these were four assailants attacking a lonely complainant in the early hours of the morning, they struck and hurt her; and they tied her hands. There was alot of violence inflicted on the complainant that a sentence of 18 years imprisonment with hard labour does not come to us with a sense of shock and it is not wrong in principle. The appeals against sentences are also dismissed.

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E.L. Sakala,
SUPREME COURT JUDGE.

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M.S. Chaila,
SUPREME COURT JUDGE

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C.M. Musumali,
SUPREME COURT JUDGE.