

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA

SCZ APPEALS NOS. 94 TO 96 of 93

(CRIMINAL JURISDICTION)

B E T W E E N:

MWANSA CHANDIKA
JOSEPH CHILOWA
DANIEL CHOTA

APPELLANTS

vs

THE PEOPLE

RESPONDENT

Coram: Sakala, Chirwa and Muzyamba JJ.S at Ndola on
8th December 1993.

For the Appellants: Mr. J.F. Silva, Assistant Senior Legal
Aid Counsel

For the Respondent: Mrs. M. Sitali, Assistant Senior State
Advocate

J U D G M E N T

Chirwa J.S. delivered the judgment of the court.

The three appellants were convicted on one count of Aggravated Robbery contrary to section 294(1) of the Penal Code. The particulars were that the three on 3rd day of September 1992 at Kabwe in the Kabwe District of the Central Province of the Republic of Zambia robbed one Mathews Mwanza of K9,000 cash and at or immediately before such robbery did or threatened to use actual violence to the said Mathews Mwanza. Upon their conviction they were each sentenced to 15 years imprisonment with hard labour. They are now appealing to this court against both the convictions and sentence.

In arguing the appeal on behalf of the appellant, Mr. Silva advanced two main grounds of appeal. The first being that the ingredients of the offence, that of violence or threats to use violence had not been proved on the evidence.

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He drew the difference between violence and force. He argued that the legislature intended that violence or threats to use violence should be proved and in this particular case there was a mere struggle which he submitted was mere force not violence. The second ground mainly centred on the identification of the second and third appellants. He submitted that the evidence of the identification of PWs 3 and 4 who should have been treated as suspects was unsatisfactory. On behalf of the State Mrs. Sitali does not support the convictions of the second and third appellants. This is a proper course taken by the State in view of the insufficient evidence against them and we agree with her submission. We therefore allow the appeals of the second and third appellants.

Coming to the conviction of the first appellant, Mrs. Sitali in supporting the conviction submitted that the identification cannot be faulted in that the complainant and the appellant himself knew each other very well and also the circumstances of his arrest drew some strong corroboration of the identification by PW3 who testified that on the day of the robbery he did witness the robbery, hence although he was in detention for one week he led the appellants to the residence of the appellant and on seeing PW3 the first appellant took to his heels. On the evidence before us, having put an alibi which unfortunately he took upon himself to prove it, but in the process disapproved it by his own witness and with the proper identification by the complainant and the identifications by PWs 3 and 4, we are satisfied that there is overwhelming evidence against him upon which the learned trial judge could convict. We therefore confirm the conviction of the first appellant, dismiss his appeal against the conviction and as regards to sentence he was sentenced to the minimum sentence allowed by law and as such there cannot be an appeal against that minimum sentence.

The appeal against sentence is dismissed.

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E.L. Sakala,
SUPREME COURT JUDGE

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D.K. Chirwa
SUPREME COURT JUDGE

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W.M. Muzyamba
SUPREME COURT JUDGE