

IN THE SUPREME COURT OF ZAMBIA

Appeal No. 52 of 1994

HOLDEN AT NDOLA

(Appellate Jurisdiction)

BETWEEN:

Julius Nkandu

Appellant

and

The People

Respondent

Coram: Gardner, Sakala and Chirwa JJ.,

6th December, 1994

The appellant appeared in person.

Mr. P. Agarwal Senior State Advocate appeared for the state.

JUDGMENT

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

The appellant was convicted of aggravated robbery. The particulars of the offence were that he and another who was charged with him on the 5th April, 1993 at Ndola jointly and whilst acting together did rob Maria Mambwe of K25,000.00 cash and at the time did use or threatened to use violence to her.

The facts of the case were that the complainant came into Ndola to purchase some pots. She had K25,000.00 on her and she was unable to find any suitable pots. When she had finished looking for pots she met three men who forced her to follow them into the bush by pointing the barrel of a gun at her. When in the bush the three men beat her and stole the K25,000.00. On her way back to town she met the second and third prosecution witnesses, the policemen on duty at a rehabilitation centre. She told them that she had been attacked and they helped her to look for her assailants. When they came to the Kitwe-Ndola road, the appellant was walking along that road and the complainant pointed him out as being one of the men who had attacked her. The appellant was searched and no incriminating item was found on him.

The appellant and his co-accused were identified by the complainant at an identification parade. There was however nothing more than this identification evidence to incriminate the co-accused, and the learned trial judge found the co-accused to have no case to answer.

The appellant has appealed and put in a number of grounds of appeal some of which relate to a suggestion that the complainant's evidence in the court below did not tally with the evidence she had given in her statement to the police. That statement was not put to the witness in the court below. No question can arise about it.

One ground of appeal complained that one witness had not been asked whether the appellant had been found with a firearm or not. It is quite clear that all the prosecution witnesses very fairly said that the appellant was found with nothing incriminating on him at all.

A further ground of appeal was that the complainant admitted to having been confused when she was attacked. It was argued that, in that case, the appellant would not have made a satisfactory identification of one of her attackers. The learned trial judge dealt with this aspect of the case very carefully and found that the complainant had been in the company of the appellant the whole of the time while they walked from Ndola into the bush. The learned trial judge found, therefore, that there was ample opportunity for the complainant to observe the features of one of her attackers and thereafter she identified him to the police on the Ndola-Kitwe road within a very short time. We cannot find that in his consideration of this aspect of the evidence the learned trial judge misdirected himself in any way at all. The fact that the appellant was found to have nothing incriminating on him when he was searched is no indication of his innocence because the allegation was that he was in the company of two others at the time of assault. We find that there is no ground upon which this appeal can succeed. The appeal against conviction is dismissed. No appeal lies against the mandatory sentence.

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B. T. Gardner
SUPREME COURT JUDGE

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E. L. Sakala
SUPREME COURT JUDGE
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D. K. Chirwa
SUPREME COURT JUDGE
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