IN THE SUPREME COURT OF ZAMBIA SCZ/09/125/1993.

HOLDEN AT NDOLA

(Criminal Jurisdiction)

B E T W E E N :

PATRICK CHANSA Appellant

and

THE PEOPLE Respondent

Coram: Bweupe, D.C.J., Sakala and Chaila JJS

On 7th March, 1994 and 20th June, 1994.

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

For the State: Mr. Agarwal, Senior State Advocate

J U D G M E N T

Bweupe, D.C.J., delivered Judgment of the court.

The appellant, Patrick Chansa, was charged tried and convicted of Aggravated Robbery contrary to Section 294 of the Penal Code and Sentenced to 15 years Imprisonmnet with Hard Labour. The particulars were that he, on 23rd July, 1992 at Ndola jointly and whilst acting together with other persons unknown, did rob Davis Chomba of K5,500 and at or immediately before or immediately after the time of such stealing did threatne to use actual violence in order to obtain or retain the said money. He now appeals to this court against conviction and sentence.

Briefly the facts of this case were to the effect that on the day in question the complainant was on his way to Fantazy car park in Masala. While walking towards the car he was attacked by two men one of whom was the appellant whom he had known before. He said the

appellant and his assailant emerged from the flowers and held PW1 who was in company of his sone, PW2, and told them that they were going to be beaten if their demands were not me. PW1 told his son to run away and PW1 also ran away to a nearby house where he called for help but nobody came out of the house. The appellant and his fellow assaillant started throwing stones at him (PW1) and one of the stones hit PW1 on the head and he fell down. The appellant immediately closed on PW1 and started to search PW1's pocket where they took a sum of K5,500.00. PW1 sreamed but no one came to his help. When his son heard him screaming he came back while the appellant and his fellow assaillants were still searching PW1. Then his son shouted "you are well known person and is that what you can do to my father?" After that PW1 and his son went home and later reported the matter to the Police. He said the assaillants were two but he identified the appellant. He said he used to see the appellant as they stayed in the same compound so he knew him before the incident. PW1 said that the place was lit and could not mistake the appellant. He went to the Police and identified the appellant at the parade. He said there were about ten (10) persons at the parade.

PW2 told the Court that he was in the company of his father, PW1, when they were attacked and robbed by the appellant and one other person. He said he knew the appellant very well before the incident and that his nick-name was "FLEXIBLE". PW2 said he went to the Police Station to attend the identification parade and he had no problems in identifying the appellant at the identification parade.

The learned Legal Aid Counsel, Mr. Silva, advanced two additional grounds of appeal. He said firstly that the judge erred in finding that there were two identifying witnesses whereas there was only one

and identification by a single witness should have been treated with caution; and secondly that the identification parade was not fairly and properly conducted.

Arguing the first ground Mr. Silva stated that it was misapprehesion of facts for the learned Judge to state that both PW1 and PW2 identified the accused for on perusal of the record of proceedings it is evident that it was PW2 who stated that he identified the appellant and conveyed the information to the father, PW1. Hence the evidence of PW1 should have been treated with caution to rule out any honest mistake. On ground two he argued that the identification parade was not properly conducted as the witness had seen the appellant before the identification parade.

We have considered the evidence on the record and the submissions given by both advocates. There can be no dispute that on the day in question PW1 and PW2 were attacked by two persons at about 23.55 hours and PW1 robbed K5,500.00. There was evidence that there was sufficient light at the scene of crime and that the attack took about 30 minutes. PW1 said he knew the appellant before as they stayed in the same compound. This evidence was corroborated by the evidence of PW2 who said he had no problems in identifying the appellant whom he had known before by his nick-name of a Mr. "Flexible". We consider PW1 and PW2 as witnesses of truth whose evidence the learned trial Commissioner found it difficult to discount. We are of the view that the appellant having been known before and identified as a Mr. "Flexible" was properly identified. We find no evidence on record that the appellant had been seen at the Police Station before the identification parade. We find no reason upon which the finding of the court below can be faulted. We would dismiss the appeal against conviction.

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Regarding sentence the appellant was sentenced to a minimum mondatory statutory sentence for which there can be no appeal. We have no jurisdiction to reduce but we were going to enhance it if we felt it was totally inadquate or had come to us with a sense of shock. We can not say that this is a proper case to enhance the sentence. We would dismiss the appeal against sentence also.

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B.K. BWEUPE

DEPUTY CHIEF JUSTICE

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E.L. SAKALA

SUPREME COURT JUDGE

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M.S. CHAILA

SUPREME COURT JUDGE