

JOSEPH CHALWE v THE PEOPLE (1995) S.J.

SUPREME COURT
NGULUBE, C.J., CHIRWA AND MUZYAMBER, JJ.S.
5TH DECEMBER 1995
S.C.Z. JUDGMENT NO. 24 OF 1995
APPEAL NO. 159/95

Flynote

Sentence - Aggravated robbery - Identification of the appellant as of the robbers.

Headnote

The appellant received the mandatory sentence for aggravated robbery, the particulars of which were that he and others robbed Christopher Milambo of a vehicle , the property of the PTC Limited and at the time used the appropriate violence. There was no doubt whatsoever on the evidence that on the night in question around 0120 hours a group of men attacked the premises of the PTC. The complainant and another guard were attacked and the property taken. The only issue before the court was the identification of the appellant as one of the robbers.

Held:

- (i) **The witnesses had identified the appellant and the Police indeed found a dust coat as described by the witnesses which suggested that a reasonable and diligent investigation took place.**

Cases referred to:

- 1. Edward Jack Shamwana and others v The People**
- 2. R. v Turnbull and Another**

For the Appellant: Mr Kabonga, Director of Legal Aid

For the Respondent: Mrs Sokoni, Acting Senior State Advocate

Judgment

GARDNER, J.S.: delivered the judgment of the court.

This is an appeal from a judgment of the Industrial Relations Court ordering reinstatement of the respondent and damages.

The facts of the case are that the appellant Corporation employed the three respondents. The first respondent was employed as regional Controller for the Northern Region, the second respondent was employed as Director of Engineering, who acted as Director General whenever the Director General was absent, and the third respondent was employed as Head of Programmes and Operations. Towards the end of November, 1991 the respondents received letters from the appellant informing them that their contracts of service were terminated and that they were being given three months salary in lieu of notice. The respondents then filed complaints with the Industrial Relations Court claiming that they had been discriminated against on the ground of their political affiliation.

We have considered the grounds of appeal lodged by the appellant in this respect, and we have also considered a related ground which the Director of Legal Aid urged upon us. Initially the Director wanted to argue that the amendment in the particulars of the offence, to show who was the correct owner of the vehicle stolen, without thereafter a new plea being taken, rendered the trial a nullity in terms of section 213 of the Criminal Procedure Code. Amendment to charges was a matter dealt with by this court in the case of Edward Jack Shamwana and Other v The People (1). The underlying rationale is always whether or not prejudice has been caused to an accused person so that he has not had a fair trial and has not had the opportunity to meet squarely the case before him. We are satisfied the amendment in this case, was in a matter of mere description to make the charge more accurate but did not in any way alter the substance of the charge. Fortunately the Director conceded the point and we need say no more about it.

With regard to the issue of identification, the learned trial judge dealt with this matter in some detail. He correctly directed himself and quoted from the case of R v Turnbull (2) and Another concerning the possibility of a mistake in the identification of an offender. He examined the opportunity which was said to be available to PW1. There was very good light and the witness recognised the appellant as a person he had worked with before. The fact that the witness and the appellant worked together was common cause.

According to PW1 the appellant requested the confederate who was armed with a pistol to kill PW1 because they had recognised each other. This was supported by PW3 who did not identify the appellant but nonetheless confirmed that one of the robbers confederate to shoot PW1 who had recognised him. There was also evidence from PW1 that the appellant had detailed knowledge of the arrangements at the premises and directed the confederate to demand the keys to the vehicles from PW1 telling them that was the person who kept the keys. In truth there was absolutely nothing wrong with the way the learned judge dealt with the matter of identification. The appellant has also argued through Mr Kabonga that he must have been identified simply because he had a dust coat belonging to the PTC. But in the light of the circumstances we have already recited, that submission does not go very far. The appellant also submitted in his own written grounds of appeal and arguments that the Police investigations in this matter were inadequate. We are unable to appreciate the validity of this particular submission. The witnesses had identified the appellant and the Police indeed found a dust coat as described by the witnesses which to us suggests that a reasonable and diligent investigation took place. We have looked through this record with a fine tooth comb. We are unable to see where the trial court went wrong. This appeal was doomed from the beginning.

It is dismissed.
Appeal dismissed.
