

(Criminal Jurisdiction)

CHARLES MWAMBA

Appellant

VS

THE PEOPLE

Respondent

CORAM: Chaila, Chirwa and Muzyamba JJ.S.

22nd November, 1995 and 7th May 1996

For the Appellant : Mr. S.W. Chirambo, Senior Legal Aid Counsel

For the Respondent : Mr. M. Mukelebai, Senior State Advocate

J U D G M E N T

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

The appellant was charged with an offence of aggravated robbery. The particulars of the offence were that, he, with another person on 13th day of February, 1993 at Kabwe in the Kabwe District of the Central Province of the Republic of Zambia, jointly and whilst acting together did rob Given Mwape of 1 compressor valued at K60,000 and at or immediately after such robbery did use or threatened to use actual violence to the said Given Mwape in order to obtain the property.

The appellant was convicted and was sentenced to 15 years imprisonment with hard labour. He now appeals to this court against the conviction. The brief facts of the case were that on 13th February 1993 around 7 hours PW1 opened his bar and closed it at 22 hours. He left his security guard namely Given Mwape locked inside. The following morning PW1 was told by the security guard that the bar had been broken into by thieves and the compressor was stolen, and that he knew one of them i.e. Lason Mweemba. Then PW1 went to

report the matter to the police station. From the Police PW1 went to Katondo and alerted friends and relatives about the stolen compressor. He went back to the bar. Two hours later Mr. Willie Mwanabuna went to tell him that somebody was selling a compressor. PW1 went to see it and recognised it as his; he went to inform the police about it. He went there with the police. The compressor was found with Mr. Mwanabuna who told him that the thieves would come back for the balance of K2,000 as he had paid them K10,000. At 20 hours that man went for the balance and he was apprehended by the police. He told the police that he was with others and he gave their names and that they stayed at Poleni compound. That man later escaped. They went to Poleni compound for the people he had mentioned and they were found and were picked. Those were the accused persons A1 Charles Mwaba and A2 Lason Mweemba. The compressor was retrieved and it was valued K60,000. The watchman died before the prosecution took place.

There are two grounds of appeal advanced in this case. The first ground is that the learned trial judge erred in convicting the appellant on the uncorroborated evidence of PW2 and PW4. Mr. Chirambo submitted that the statement of an escapee was not corroborated. The escapee did not give any evidence, and the statement was a hear-say. He argued that A1 took part in the sale of the compressor but A1 explained how he was found at the place with the escapee. They went together and sold the compressor to PW2. They were later apprehended. A1 gave an explanation on how he came on the scene of the sale. The escapee was an accomplice.

Mr. Mukelebai on this ground argued that there was no need to look for corroboration. PW2 said that A1 was seen the next morning selling stolen items. The appellant was seen. The appellant himself admitted taking part in the sale. There was no need for corroboration. A1 participated in the sale of the compressor. He was not an innocent one. The appellant is the one who got the balance from PW2.

The second ground was that the court erred in holding that the prosecution had proved their case and urged the court to allow the appeal.

Mr. Mukelebai on the second ground advanced the same argument as on ground one. He maintained that the appellant participated in the sale.

In reply Mr. Chirambo admitted that A1 got the money from the buyer but he explained that he wanted to get the money since was owed money for a long time.

We have carefully considered the submissions of the learned counsel and the evidence on record. It is a common cause that A1 was found selling stolen items. He was apprehended on the information of the escapee and by the evidence of PW2 who led the police. There is no dispute that A1 went to get the balance of the money. Mr. Chirambo submitted that his client was involved in the sale in order to get the money which was owing to him. The learned trial judge did not accept this explanation. The evidence was that the compressor was stolen in the night and the following day the appellant was seen selling the item. Could his explanation that he was doing so in order to get the money he was owed be reasonably true? The explanation was dismissed. The appellant was found selling the compressor himself. Although the escapee did not give evidence, the information to the police gave a lead to A1's arrest and to the recovery of the Compressor. In our view that lead and subsequent arrest and discovery of the compressor support the prosecution's evidence. We find that the learned trial judge correctly convicted the appellant and the appeal is therefore dismissed.

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M.S. Chaila
SUPREME COURT JUDGE

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SUPREME COURT JUDGE

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W.M. Muzyamba
SUPREME COURT JUDGE