

IN THE HIGH COURT OF SWAZILAND.

HELD AT MBABANE.

REX

vs.

RICHARD NKAMBULE

Review Order NO.14/18

District of Lubombo (Siteki)

Mbabane on 2nd October, 1981

Review Case No. 231/81

JUDGMENT ON REVIEW

Nathan, C.J.

The Accused in this case was convicted of robbery and was sentenced to imprisonment for two years. He is a first offender, apparently aged 23, unmarried, with no children. The offence took place at the Siteki Bamboo Inn Hotel after the Accused had been drinking with the complainant, who was drunk. Very little force was used. The Complainant was robbed of E160.00 (it was pay day), a Swaziland travel document and a driver's licence. None of the cash or documents have been recovered.

The case came before me on automatic review, and as it appeared to me prima facie that the sentence was excessive, I requested the Magistrate to furnish reasons for the sentence. This he has done. He points out that robbery cases are by their very nature serious offences; that this type of crime is now very prevalent in the Lubombo district; and that the Accused had abused the complainant's friendship. He also makes the point, with which I will deal, that when the offence was committed the Accused was employed and was earning E120-00 per month. Hence, submits the Magistrate, the Accused must be treated differently from an Accused who is unemployed.

2

The main factors which initially prompted me to doubt the correctness of the Magistrate's sentence are the Accused comparative youth and the fact that he is a first offender. On reflection, however, I find myself in agreement with the Magistrate that these factors in themselves cannot save the Accused from a prison sentence, and I agree that robbery is a serious offence and that the Magistrate was entitled to have regard to this and to the prevalence thereof in the Lubombo District, and also to have regard to the circumstances in which the offence was committed.

I am accordingly not prepared to interfere with the imposition of a good sentence without the option of a fine. It remains to consider, however, whether a sentence of two years imprisonment is not excessive in the circumstances. It appears to me that it was excessive, I have already drawn attention to the amount involved, which was not considerable, although inconvenience to the complainant arising out of the loss of the travel document and driver's licence is manifest. But it appears to me - and this is a factor which the Magistrate seems to have overlooked - that a more appropriate sentence would be to suspend portion of the period of imprisonment.

There is, lastly, the question of the Magistrate's justification of his sentence by the fact that the Accused was employed and earning a salary at the time. I am by no means sure that the Magistrate has not misdirected himself here. If he means that an employed Accused must necessarily be treated more severely than an unemployed accused, then I disagree. Although there may be more incentive for an unemployed Accused to steal or rob than for an employed Accused to do so, the fact

3

of the conviction and a gaol sentence will weigh more heavily on the employed Accused who will lose his employment.

I make the following Order: The conviction is confirmed; but the sentence is altered to one of imprisonment for two years, of which one year will be suspended for 3 years on condition that the Accused is not convicted of any offence of which theft is an element, committed during the period of suspension.

(C. J. M. NATHAN .)

CHIEF JUSTICE.