

IN THE HIGH COURT OF SWAZILAND

a:Mashaba

REX

vs

BHEKI JOSEPH MASHABA

Cri. Trial No. 83/1997

Coram S.W. Sapire

For Crown J. Maseko

For Defence In Person

Judgment

(9/3/98)

The accused was originally charged with another on three counts.

The trial was called and the man who was named the first accused in the indictment was not present. I am informed that the crown proceeds only on count 1 against the accused Bhekie Joseph Mashaba who stands before Court.

The count of armed robbery which is count 1 alleges that on or about 16th August 1992 and at or near Sihhoye in the Lubombo District the said accused persons with common purpose unlawfully and with intention of inducing submission by Daniel Magagula to the taking, by the accused persons threaten the said Daniel Magagula that unless he consented to the taking by the accused persons of a motor vehicle Nissan SD 024 UM or refrain from offering any resistance to them in the taking the said vehicle they would then and there shoot him and did thereupon take and steal from the person of the said Daniel Magagula the said motor vehicle in his lawful possession and did rob him of the same

Although the wording of the indictment is clumsy ungrammatical and inelegant the

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meaning and import is clear. The Accused who was undefended was again informed of his right to representation by counsel but indicated that he would be defending himself. He pleaded not guilty.

The complainant Daniel Magagula said that on the morning of the 16th August, 1992 at about 10.00a.m. he was driving his white Nissan Bakkie SD 024 UM collecting thatch grass. At about 1.00p.m. when returning from collecting the thatch grass at the Nkambeni/Sihhoye public road he was accosted by two men one of them was armed and the vehicle was taken from him at gun point.

A man had pointed a gun at him demanding the keys and forced him out of the vehicle. They drove away and left him stranded. This complainant identified the accused as one of the two persons and stated that it was the other person who is not before Court who actually held the firearm. It is quite clear that two men were involved in the robbery.

The vehicle was later recovered and on the 22nd August, 1992 the complainant identified this vehicle at Mliba Police Station.

The evidence of the identification by Magagula of the accused as one of those who assaulted him is not satisfactory in that he was not asked to identify the accused person on a properly constituted identification parade. And could not stand alone in the absence of other evidence linking the accused with the commission of the offence.

The other evidence available to the police may however be an explanation for this omission and the identification of the accused as one of the persons is well established by the evidence. Elizabeth Dlamini of Sihhoye said that she saw the accused driving the very same Nissan Bakkie has had been taken by force from the the complainant carrying thatch grass. Accused No. 1 who is not before Court is well known to her and is a close relative. She says that as she spoke to the accused, as a result of the conversation an arrangement was made for the thatch grass which was on the vehicle to be delivered at her home

Now this evidence was hardly contradicted by the accused and no reasonable suggestion was made why Elizabeth should fabricate such a story. Elizabeth was able to identify the vehicle she saw as the same Nissan bakkie that has been taken from the complainant and which today stands as an exhibit outside the Court. I enquired from her on her means by which she was able to identify the vehicle and she described certain damage. It is important to note that she was not seriously challenged on this evidence and I am satisfied

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that she saw the accused no. 1 in possession of this vehicle shortly after it had been taken from the complainant.

The delivery of the grass was confirmed by Cornelius Methula who is Elizabeth's husband. He connected this delivery of the thatching grass to his house with the conversation he had heard that day on the bus relating to the vehicle belonging to the complainant which had been stolen at gun point. He reported the matter the following day to the Police.

The evidence of the crown witness Lucas Dlamini was more than vague and he clearly was not giving a concise and accurate account of what took place on the 16th August 1992. It is sufficient that he confirms that at that time accused no. 1 and accused no. 2 were seen in a vehicle a Nissan bakkie from which the number plates were removed. He also confirms that the accused and his companion ran away from the scene where they were when persons they thought to be soldiers arrived on the scene.

The theft by robbery of the vehicle has been proved beyond doubt. The identity of the robbers has similarly been proved and in the absence of any explanation from the accused as to his connection with the vehicle the inference must be drawn that he was the person identified by the complainant as being one of the persons who took part in the robbery.

I accordingly find the accused guilty on count 1 as charged.

SENTENCE

You were last convicted 9 years ago when you were sentenced to 2 years for armed robbery. Previously you had been found guilty of housebreaking and theft. That was in 1986. So it is 11 years ago. What has taken place since your last conviction is a question of conjecture and in passing a sentence on you I am going to take this long period of free of previous convictions in your favour. But I must warn you that repeated offences of this nature can result in you being declared a habitual criminal.

Even so this particular offence is itself a very serious offence. The hijacking of motor vehicles and robbery from owners will not be allowed to pass without a substantial punishment. Had your previous convictions been more recent I would not have considered giving you the benefits of the suspension of part of the sentence I am about to impose on you. But the period you will have to serve apart from the suspended period has to be substantial. The whole sentence itself has to reflect the seriousness with which society regard robbery especially in a repeating offender.

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I accordingly sentence you to ten years imprisonment four years of which will be suspended on condition that you are not thereafter found guilty of an offence committed during the period of suspension which is 3 years involving theft or robbery. In view of the fact that you have been awaiting trial for over a year the sentence which I have imposed on you will be deemed to have commenced on the 27th January, 1997.

S.W. SAPIRE

ACTING CHIEF JUSTICE

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this tragedy.

I strongly appeal to them not to resort to self-help and take the law into their own hands as that action would erode the very tenets of the rule of law we are trying to preserve in this country. If they would do that this country will be thrown to chaos where dog eat dog. A philosopher in the 15th century who shaped in some degree, in the Western worlds' jurisprudential growth and thinking on the validity of laws by the name of Thomas Hobbes in his Leviathan aptly described that chaos in the following terms: that life would be "nasty, brutish, and short". These courts and the community of law-abiding citizens of this country would not want to return to that state referred to by that ancient sage and revert to a state of nature where there is general lawlessness.

S.B. MAPHALALA

ACTING JUDGE