

IN THE HIGH COURT OF SWAZILAND

Maxwell Mbongeni Ndwandwe

Appellant

V

REX

Cri. Appeal No. 33/98

CORAM : S. W. Sapire, CJ; Matsebula, J

FOR THE APPELLANT : In Person

FOR THE RESPONDENT ; Ms Langwenya

JUDGEMENT

(20/07/99)

SAPIRE CJ

The appellant was charged at the Magistrates' Court at Mbabane in the District of Hhohho. He was alleged on the 25th of May to have committed a robbery at or near the Royal Swazi Sun filling station. The charge related to the theft of a plastic container containing E1 168.45, which he took from Siphwe Gugu Shabangu under threat of violence. He was armed with a bush knife and threatened to use it on her.

The crown led the evidence of the complainant and another woman who was in the shop that corroborated each other and substantiated the allegations in the charge sheet. They were cross-examined by the accused. The cross examination did not disturb the evidence they had given and he certainly did not put to them what he has argued in this court, namely that at the time of the offence he was not there because he was in jail. That is clearly an after-thought and did not even appear in the Notice of Appeal. Certainly it does not appear in the record.

The offence was proved and there was no serious evidence on the part of the appellant to gainsay the witnesses called by the crown. In our view the Magistrate was

2

clearly correct in coming to the appellant committed the offence beyond any reasonable doubt. In fact there is no doubt at all and the appeal on the conviction must fail. The appellant also seeks a reduction in the sentence claiming that the sentence imposed was excessively harsh to such an extent that it induces a sense of shock. When one looks at the Magistrate reasons for imposing the sentence one cannot find any misdirection. He considered all the relevant facts. He was correctly aware of the threat of serious injury posed by the appellant's possession of a dangerous bush knife. He had in mind the not inconsiderable list of previous convictions. These did not appear to have deterred the appellant from his behaviour and he imposed a sentence which, having regard to the circumstances and having regard to the expectations of the public in regard to the punishment of criminals cannot be said to be shocking.

The appeal court will not interfere with the sentence of the Magistrate unless there are misdirections or unless the sentence is so excessive as to, as it has been said, induce the sense of shock there is no reason in this case for interfering with the sentence. I therefore recommend that the appeal both on conviction and on sentence be dismissed.

I agree

MATSEBULA, J

The appeal is accordingly dismissed.

SAPIRE, CJ