



SWAZILAND HIGH COURT

Mbongeni Dladla
Nkalashana Mavimbela
Appellants

v

REX

CRI. APPEAL NO. 10/2000

Coram

Sapire, CJ
 Maphalala, J

For Appellants

In person

For Crown

Mr. Sibandze

JUDGMENT (28/03/2000)

The two appellants were charged in the subordinate court of Shiselweni held at Gege. The first appellant was charged on two counts of robbery. As far as the 2nd appellant is concerned there are two additional counts, count 2 also robbery and count 3 contravention of Section 11(8) of the Arms and Ammunition Act. The convictions are amply supported by the evidence and there is very little to be said for the appeals on the merits.

The first appellant was identified by the complainant on the second count with which he is charged and he made a confession in regard to the first count. In this court the appellant sought to argue that the confession was not freely and voluntarily made. This was not the stance taken by him in the court a quo. In the court a quo there was no challenge to the confession which was made before a magistrate who testified to the statement having been made freely and voluntarily. The customary questions were put to the appellant who made no mention of any undue influence or

any undue force or anything untoward having been applied to him to induce him to confess.

I am satisfied that there is no reason to interfere with the decision of the magistrate on the convictions.

There is also an appeal against the sentences. In so far as the second appellant is concerned he was sentenced to various terms of imprisonment on the 4 counts and it was ordered that the sentences run consecutively. The practical effect of this is that the sentence is 21 years which, for a first offender, is really something which is practically unheard of.

Both appellants seem to be reasonably young men and while we do not lose sight of the seriousness of the offence we consider that the ultimate sentences should be reduced. This is not a case where there is any misdirection by the Magistrate in relation to any particular count and we cannot interfere with the sentences imposed. What we can do is to alter the sentences only in so far as the question of them running consecutively is concerned.

In the case of the 1st appellant therefore the appeal will succeed to the extent that the sentences on count 1 and count 4 are to run concurrently in so far as 3 years of each sentence is concerned. So that the accuse will serve 6 years in respect of the first count and on the second count a further 6 years which 3 years will run concurrently with the sentence on the first count.

In respect of the second appellant the sentence will be similarly reduced in that the sentences on the first and second counts will run consecutively while the sentences on the 3rd and 4th counts will run concurrently with the sentences on the first two counts. The effect of sentence in his case will be 10 years because on count 2 there is an option of a fine and the Magistrate suspended 2 years on certain conditions.

The effect of the sentence therefore is that the sentences on count 1 and count 2 that is 6 years. The sentences on count 3 and 4, will run consecutively to the sentences on counts one and two but concurrently with each other, making the effective sentence 10 years.



Sapire, CJ



Maphalala, J