IN THE APPEAL COURT OF SWAZILAND

In the matter of: CASE NO. 23/81

REX

vs.

MBUZENI MABUZA

CORAM : MAISELS, JUDGE PRESIDENT

DENDY-YOUNG, JUDGE OF APPEAL

ISAACS, JUDGE OF APPEAL

FOR RESPONDENT: MR. NSIBANDZE

FOR APPELLANT: IN PERSON

JUDGMENT

(Delivered on 27/1/81)

Isaacs, J. A.

The Appellant in this case had been convicted in the Big Bend subordinate Court of the crime of Robbery. Because of his previous convictions the Magistrate committed him to the High Court for sentence. He was declared an habitual criminal by. the learned Chief Justice.

In his ground of appeal the Appellant states :-

"That the conviction and sentence were against the weight of the evidence and the crime in all material respect and the Judge should have warned me in the light of the previous convictions"

When he appeared before the High Court for sentence the Accused contended, inter alia, "My case was not properly tried by the Magistrate. The evidence should have been led in my favour but was not. The Magistrate denied me the chance of calling my evidence i.e. defence witnesses".

When an accused is convicted in a subordinate court of . an offence and committed to the High Court for sentence, it is, of course, necessary for the High Court to satisfy Itself that the conviction was justified, (c/p. R. v. MUNYARADZI 1963 (5) SA 468 (FC)
The Magistrate did not record his reasons in writing. It

however appears from the evidence of one Queen Nkosi (P.W.1) who ran a store in Big Bend that two men had entered the shop each armed with a spear and a revolver and demanded money with threats of violence (the revolvers were later found to be toy pistols) It is not necessary to set out the details of this witness's evidence in full but it is quite clear that the two men in question used violence to obtain money. She had screaned and saw one MABUZA, an employee of the store which was being robbed trying to climb through the window. He was evidently seen by one of the robbers as they ran out of the store with the money. The witness called the public and subsequently she was called to the Manzini Police Station where she identified the Appellant as one of the robbers he being the one who threatened to shoot her. The Appellant had been brought to the shop in the company of a police officer and she saw him wearing a hat which she recognised as a hat worn by him when

the robbery occurred.

Detective Sergeant ZEPHANIA VILAKAZI gave evidence to the effect that following certain information he had gone to Manzini Police Station where he was handed a stolen motor-vehicle together with the Appellant in which were two spears and toy pistols. The witness before questioning the Appellant cautioned him in terms of the judge's rules. The Appellant denied knowledge of the articles found in the vehicle. Later when taking the Appellant in a vehicle to Big Bend the Appellant asked him to return to Manzini where he (Appellant) would show the witness where he had placed the money the subject of the case. He went with the Appellant to the homestead of Appellant's mother the Appellant leading the way. Witness cautioned the mother in the presence of the Appellant. His mother then produced E160-00 in E10-00 notes. She said the Appellant had asked her to keep it for him. The witness handed in bank plastic bags found in

Appellant's possession. He asked the Appellant to go to the shop from which the money had been stolen. The Appellant led him to the store of C.W.1. Appellant demonstrated to him in the presence of. C.V. 1 and other shop assistants what he had done when he took the money. He took one spear and one revolver and demonstrated how he had threatened C.W. 1.

Alphus Mabuza P.W.4 said he was an employee at the store in question. At about 7.30p.m. on 23rd December, 1980 he saw two men came into the store. He said one man pushed.P.W.1 away. Then both men went to where the money was, grabbed it and run away. On December 29 police arrived at the shop with the Appellant who demonstrated how they had came into the shop. He said Exhibit 1 (spear and revolvers) were in possession of the people who came into the shop.

The Appellant gave evidence which was a complete denial. He said the spears and revolvers were in the motor-car he was driving. He said the money found by the police was his own money. He said the motor-vehicle belonged to one Matsenjwa. He said he did not know shop that the police led him to it.

In this court the Appellant contended that he was not guilty. He said the Magistrate had refused to allow him to call witnesses.

There is nothing on the record to show that he had wished to call witnesses.

Counsel for the Crown contended that even if the statement made by the Appellant to the police officer was not admissible facts described as a result would be admissible. He referred to Section 227 (2) of the Criminal Procedure and Evidence Act and to R. v. SAMHMDO 1934 AD 608.

In my view there is inescapable evidence on the record to implicate the Appellant. He was identified by C.W.1 The spears and the revolvers were found in the vehicle he was driving and in my view this is something which could not happen unless

the Appellant had previously had them. In my view this would be sufficient apart from any admissions by the Appellant. But I am of the view that the demonstration in the shop by the Appellant in the presence of P.W.4 is quite admissible even if the warning given by the police officer was not sufficient I agree with the Crown Counsel on this aspect. This demonstration is also a factor to show the Appellant's guilt.

The previous convictions of the Appellant are such as to completely justify the learned Chief Justice declaring him to be an habitual criminal.

I would dismiss the appeal.

(I. ISAACS.)

JUDGE OF APPEAL

I agree :

(I. A. MAISELS.)

JUDGE PRESIDENT.