

IN THE HIGH COURT OF SWAZILAND

Cri. Appeal No. 2/1996

In the matter between:

THE KING

vs

Manteza Mavuso Appellant

Siboniso Ginindza Appellant

CORAM: S.W. SAPIRE, ACJ

J.M. MATSEBULA, J

JUDGMENT

(11/12/96)

This is an appeal by two appellants against their conviction and sentence in the subordinate court.

They were charged together with others on three counts. The first was a count of robbery it being alleged that on or about the 14th of January, 1994 and at or near the 701 Nightclub at Mbabane the accused either one or all did unlawfully assault Kenneth Alvely and by intentionally using force and violence to induce submission by the said Kenneth, did take and steal from him a sum of E300.00 in cash being his or in his lawful possession, and did rob him of the same.

The complainant gave clear and acceptable evidence of how he was robbed by two people one of them being positively identified.

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That person was the 1st appellant. His evidence is corroborated by an eye witness to whom 1st appellant was well known. He actually saw the robbery taking place. These two witnesses have such testimony that there was a strong prema facie case against the appellants. Their poor denials that they took part in the assault and robbery cannot upset the strong case more especially when count 2 is taken into account. Because what apparently happened was that after they had assaulted and robbed the complainant on count 1 they then went and assaulted Douglas Dlamini who is the eye witness because he was said to be the one who informed on them.

The two appellants are well known to Douglas Dlamini and there is no reason why he should fabricate not only having seen an assault on the first complainant but the assault on himself. The third count does not concern this appeal and does not fulfil to be dealt with here. As I have said the grounds of appeal on this matter have in no way been substantiated and there is no way in which this court can interfere with the judgment of the Magistrate convicting the accused. We are satisfied that that judgment is correct. We say this even taking into account certain misdirections by the Magistrate on the evidence which in our opinion signify nothing. As far as the sentence is concerned the 1st appellant is very lucky to get the sentence he got. His previous convictions indicate him to be a person who has robbed people on two previous occasions. On those occasions he was given the opportunity of avoiding imprisonment by the payment of a fine. And the sentences only indicate that the Judicial Officer who passed the sentences did not take a serious view of the anti-social conduct of which the appellant has been guilty. We see no misdirection which has been made by the Magistrate and we are not at all shocked by the sentence he has imposed.

As far as the 2nd appellant is concerned he has a previously clean record and this was taken into account by the Magistrate. It is high time that people should be able to walk in the streets of Mbabane without fearing assault and robbery by persons like yourselves.

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I do not know whether you will learn a lesson from these sentences because you will still be young men when you come out. But robbery must be visited with every sentence if only to keep people like yourselves off the streets.

I propose that your appeals be dismissed. The appeals therefore both against conviction and sentence are dismissed.

I AGREE

S.W. SAPIRE J.M. MATSEBULA

ACTING CHIEF JUSTICE JUDGE OF THE HIGH COURT