



SWAZILAND HIGH COURT

Big-Boy Bennet Nyawo
Appellant

Vs

REX

Crim. Appeal No. 23/2001

Coram

Sapire, CJ
Annandale, J

For Appellant
For the Crown

In Person
Mr. S.S.N. Wamala

JUDGMENT (02/08/2001)

In this case having read the evidence and having read what the Magistrate found I do not see how anybody can fault the Magistrate for the conclusion to which he came. All the circumstances connect you with the offence. The complainant identified you positively. There may be some questions about his identification because there was no parade and you were already in custody when he saw you. But Nonhlanhla is positive and she had every opportunity of seeing you.

Before I deal with the question of the merits of appeal, it is quite clear that the sentence has been backdated from an incorrect date. The Magistrate clearly misdirected himself and had the wrong impression that you were arrested on the

11th October when in fact the operative date is 30th September and to that extent the backdating of the sentence will be corrected to conform with what in fact appears in the warrant of committal.

As far as the merits of the case are concerned that is the conviction and the sentence I have these observations to make.

It has clearly been established that the hijacking of the vehicle did take place. You are clearly connected with the hijacking and you are identified by two witnesses as one of the three persons who were the assailants and who committed the offence. There is nothing from you to contradict this and your criticism that appears in the Notice of Appeal was largely irrelevant. The fact is Nonhlanhla had every opportunity of identifying you, she happened to be in the vehicle when the police came there and you happened to be the only other person in the vicinity and you are identified as the person who committed the offence.

It would be very unusual for a court of appeal to override the Magistrate's decision on fact because as it has often been pointed out he has every opportunity of observing the witnesses and coming to a conclusion on the basis of this first hand observation. In this case it is not even necessary because there is no evidence to contradict what the crown witnesses have said. The appeal in so far as conviction is concerned cannot succeed.

As far as the sentence is concerned, you must consider yourself lucky in that the Magistrate who had jurisdiction to impose a sentence of 7 years did not even exercise the full extent of the jurisdiction. The appeal on sentence cannot succeed. There are no misdirection and in our view the sentence is inadequate. I would therefore dismiss your appeal both on the conviction and on the sentence save to the extent I have already mentioned.

SAPIRE, CJ

I CONCUR

ANNANDALE, J