

IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE APPEAL CASE NO. 18/2000

In the matter between

BIG BOY BENNET NYAWO Applicant

Vs

THE KING Respondent

Coram BROWDE, JA

BECK, JA

ZIETSMAN, JA

For Applicant For Respondent

JUDGMENT

BROWDE, JA

This is an application for leave to appeal to this court. The applicant was charged in the Nhlanguano Magistrate's Court with the crime of robbery. The Crown alleged that on or about 30 September 2000 he, in the company of two others who later escaped, robbed the complainant one Mbongeni Headman Simelane of his motor vehicle. The applicant was found guilty and sentenced to imprisonment for 6 years backdated to 11 October 2000 which was the date of his arrest.

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The applicant lodged an appeal to the High Court which appeal was dismissed and the conviction and sentence were confirmed. The court consisting of Sapire, CJ and Annandale J, found that there was no merit in the appeal and because they were of the view that there was no prospect of success a certificate to permit of an appeal to this court was refused. The applicant now seeks leave from this court to bring his appeal before us.

The evidence given before the Magistrate regarding the robbery was that of the complainant and one Gcinaphi Cele who was said to be the "girlfriend" of the complainant. She is also referred to as Nonhlanhla. Their evidence is substantially to the same effect. They were parked near Nhlanguano Park at between 7 p.m. and 8 p.m. on 30 September 2000. Suddenly the car doors opened and three men forced their way into the car. The driver's seat was occupied by one of them who then proceeded to drive off with Cele next to him and the other two on the back seat with the complainant between them. Because at least two of them were armed no resistance was offered by the complainant or the woman Cele. They drove to a forest where the complainant was forced from the car, tied up and left lying there. The others then drove off after taking E80 from the complainant who had been forced by threats with a knife and a gun to hand over the money. Eventually the complainant freed himself and made his way to the police station. He ultimately identified the applicant in the dock as his assailant. Although this form of identification is usually unsatisfactory since the mere fact of the person in the dock having been arrested by the police and charged with the offence would probably suggest that he was the person responsible for the

crime, in this case the identification is amply corroborated by the witness Cele. She was kept in

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the car after the complainant was tied up and left in the forest, and she thereafter spent a long time in the company of the three men. The applicant made a sexual advance to her which she declined and she stated in evidence that he threatened her that if she disclosed what happened to the police "he did not know what he would do to me." She was still in the car when ultimately the three alighted from it with the stated intention of robbing a nearby bottle store. It was then that they were arrested by the police in the immediate vicinity of the motor vehicle. Two escaped but the applicant was kept in custody and driven together with Cele, to the police station. It is quite clear, therefore, that there was no need for an identification parade as far as Cele was concerned. Her identification of the applicant was unassailable. Her evidence was not seriously challenged since the applicant elected not to give evidence under oath.

The description of the evidence by the judges in the High Court, as "overwhelming" is fully justified and there is no prospect of success in a further appeal to this court.

Leave to appeal is accordingly refused both as to the merits and the sentence which was, if anything, lenient.

BROWDE, JA

I agree

BECK, JA

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I agree

ZIETSMAN, JA GIVEN AT MBABANE this..15th.....November 2002