

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL APPEAL NO. 11 OF 1999

HARRY CHIJOTA

VERSUS

THE REPUBLIC

From the Resident Magistrate Court Sitting at Blantyre
Criminal Case No. 580 pf 1998

CORAM: TWEA, J.

Jafu (Miss), State Advocate for the State
Sitolo, Representing the Appellant
Marsen, Official Interpreter

JUDGMENT

The appellant in this case appealed against the conviction and sentence. The appellant filed five grounds of appeal.

The appellant was charged with five others of armed robbery. They all pleaded not guilty but after a full trial the Court found all of them guilty and convicted them. They were each sentenced to eight years imprisonment with hard labour.

The facts of this case were that on the 13th June, 1998 at about 4:30p.m. P.W., a trader in hardware at Blantyre City Centre sent his driver, PW2 to go a park and pick up touch. He remain in the shop with the second accused. Later a customer came in to take quotations for various items. Later more customers came in to ask for the price of cement. In the course of all this one of the customers closed the door of the shop, another grabbed PW1

by the neck, pushed him into a toilet and threatened to shot him. The second accused too was shoved into the toilet and he fell on top of PW1. Later PW1 heard a knock it was his evidence that he knew that it was his driver who had come back. The intruders then run away. He later noted that the money drawer was open and the money, about K8,000.00 - K10,000.00 which was in the drawer was gone. However, the intruders left behind a black bag which contained some photographs and a knife. These were identified in court and tendered.

PW2 said that when he knocked on the door the 3rd accused opened the curtain to peep, and closed it. He then knocked again, then one person opened the door and warned him to give way or be stabbed. He stepped aside and this person began to run away, he had a small bag with him. PW2 gave chase, but gave up when members of the public warned him that he would be stabbed. He did not check on the others because he gave chase to other man.

The matter was referred to Police at Blantyre by PW1, PW2 and the second accused. The bag, the knife and the photographs were surrendered to Police.

It was the evidence of PW3, a Police Officer that he investigated them by tracing the people on the photographs. When he found the owner, he conducted further enquiries and arrested the five accused person. He recorded statement under caution from all the five which he tendered in court.

In his defence the applicant told the court that on 17th June Police came and searched his house. They took away some medicinal drugs that he sold in his hawker and K620.00 and then arrested him. He was taken to Blantyre Police and questioned about the robbery. He denied having any knowledge the robbery, even after he was assaulted. He also did not identify him. This was the end of his defence.

It was alleged in appeal that the lower court had wrongly reversed the burden of prove on defence of alibi. With due respect the appellant did not plead alibi in his defence. An alibi is a provable account of an individuals where about at the time of the commission of a crime, that would make it impracticable to place him at the scene of the crime. He said nothing about

where he was or what he did on the day this offence was committed: 13 June, 1998. It was only in his evidence in cross-examination that he did come to the City Centre, and also in his statement under caution that he did come to the City Centre but was unable to go back that afternoon to take part in the agreed robbery at the shop of PW1. This statement however, had been rest racked in the lower court. This was the only basis on which he could have pleaded alibi. I find no merit in this argument by the appellant I therefore dismiss this ground of appeal.

The other grounds of appeal were that there was no evidence to support the conviction which the based on the statements of his co-accused persons.

Let me mention at the outset that the accused person in their defences denied to have been in the robbery. In fact they denied even knowing each other save for two. In all their statement under caution however, they told the police of a conspiracy to rob the shop which was led by Douglas, who was at large at the time of the trial. At the time of the robbery others did surveillance outside the shop while others went in. The appellant statement had it that he had agreed to take part but was unable to make it to the City Centre that afternoon. Be this as it may, when they converged in the evening he got a share of K40.00 from the proceeds of the robbery. I said earlier however, that the appellant retracted this statement in court.

The learned Magistrate in her judgment gave this point a lot of thought. She found that several persons entered the shop and took part in the robbery. That the bag and the photographs left behind enable PW3, the Police Officer, to arrest 1st accused who led the police to all the others save the ones who are at large. The lower court made by the accused persons and that they are materially true. She found they had conspired to rob the shop and that they did rob the shop. She found all of them guilty.

I find no fault with the learned Magistrate's analysis of the evidence and her findings. I am of the view that the evidence was sufficient to warrant the conviction against the appellant. These grounds of appeal must also fail.

The last point is that the sentence of eight years is excessive. I do not think so. This is aggravated robbery. It was planned for a long period involving an insider and there were seven people involved. These factors

militate against any lenience to the appellant. This ground too must fail.

I thererfore dismiss the appeal.

Pronouncedin open Court this 21 day of December, 2001 at Blantyre.

A handwritten signature in blue ink, consisting of a large, stylized 'E' with a horizontal line crossing it, and a small circular mark below the intersection.

E. B. Twea
JUDGE