

IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APPEAL CASE NUMBER 119 OF 2007

BETWEEN

JOSEPHY GANIZANI ----- APPELLANT

AND

THE REPUBLIC ----- RESPONDENT

CORAM : SINGINI, J.
: Appellant, unrepresented
: Mrs. Mary Kachale, Principal State Advocate, of
: counsel for the Appellant
: Mrs, Mbewe, Court Reporter
: Mrs. Nakweya, Court Interpreter

JUDGMENT

The appellant was convicted after trial, along with two others, Charles Pinto and Shaibu Adam, by the First Grade Magistrate Court at Kasungu of two Penal Code offences of robbery with violence and causing grievous harm both in respect of one George Akidu, the complainant in this matter, who happened to be a police officer serving at Kasungu Police Station when they attacked him around seven o'clock in the evening within the Kasungu Township on 15th October, 2006.

The attackers hit the complainant on the head with some heavy wooden stick and stabbed him with a knife or knives in part injuring him on the left eye which, according to the medical report, was so badly damaged that it was eventually removed and replaced with an artificial device as a false eye. The three of them ran away leaving their victim

lying on the ground. He was found at the scene of the attack some two hours later by the police who had received a report of the incident.

At the time of the attack the victim was walking towards his motor vehicle which he had parked nearby. He complained having lost a number of valuable items from the motor vehicle, including a cash amount of K3,500, and he suspected that it was the same robbers who must have stolen those items as part of the crimes they committed against him that evening. However, they were not charged with the theft of the items.

The trial court delivered its judgment on 22nd June, 2007, and found all the three guilty of the offences as charged and sentenced them on 25th June to imprisonment with hard labour for nine years on the charge of robbery and six years on the charge of causing grievous harm, with the sentences to run concurrently.

Only the appellant has appealed against both conviction and sentence. In essence his ground of appeal against conviction is that he did not commit the two offences against the complainant and no credible evidence was offered by the State to show that he took part in attacking the complainant.

The evidence against the appellant came mostly from the complainant. The two were well known to each other as close friends. In presenting his appeal before me, the appellant himself mentioned that at one point the two of them lived together in the same house in the township. In his evidence the complainant told the trial court that he also knew the appellant by his nick name of Joe Mbuzi as the appellant was known among friends.

The complainant testified in the trial Court that when he was being attacked he grabbed and wrestled with the appellant while one of the other two attackers hit him with the heavy stick and the other stabbed him with a knife on the left eye. The complainant gave particulars of his assailants, including particulars of the appellant, to the police. It would appear the appellant disappeared from the township since the police were able to arrest him only two days later on 17th October at his house around four o'clock in the morning.

The complainant had also described to the police that the appellant had worn a cardigan jacket, black in colour. When the police searched the complainant's house they did find a similar jacket and the appellant did not deny that it was his. On this premise the trial court found that there was sufficient corroboration of the evidence of the complainant as regards the complainant's identification of the appellant.

Although this did not come out in his evidence in the trial court, in his notice of appeal, written from his imprisonment at Maula Prison in Lilongwe, the appellant admits being at the scene of the attack talking to the complainant but claims that he was the first to be attacked when he was pushed to the ground by the attackers, but he stood up and took to his heels and ran away fast to escape the attack. He states (in rather poor English grammar but sufficiently comprehensible):

“One day on my way home from the pub, I met with a policeman who is familiar with me. We started chatting as we used to be doing. Never was it too long when two thugs brutally pushed me down. I stood to my feet and ran away.

Behind me the person to whom I was chatting was in hot soup by the two thugs. Since there was severe injury he was taken to Kasungu Hospital where he recovered. After his recovery he stated on how the tragedy was. He told the police and the court that I were the first person to meet him and the thugs got us there and how I ran away.

“The knowledge he had of these thugs Shaibu and Charles Pinto who when apprehended agreed to have done the malpractice. To my surprise before court I was also found guilty and slashed me nine years imprisonment with hard labour.

“I denied the charge before court because the first person to be met by the victim was me but I ran away when I was pushed down by the thugs.

“Had it been I were together with the thugs I couldn’t escape the time they got us.

“The victim before court mentioned of these two people: Shaibu and Charles Pinto to have performed the malpractice.

“The court said I was there despite my running away”

I would myself give considerable weight to the fact of the close familiarity of the complainant with the appellant, alluded to by the appellant himself both in presenting his appeal before me and in his

notice of appeal, as a strong factor in corroborating the evidence of identification of the appellant by the complainant. There is also the fact that the appellant did not report this violent crime against his own friend when he witnessed the incident. He also appears to have immediately disappeared from the area for a couple of days. I therefore find that in this case the evidence of identification of the appellant as an accused person seen during hours of darkness has been corroborated to the required degree. The trial court quite properly believed the evidence before it connecting the appellant as one of the three persons that attacked the complainant.

I accordingly dismiss the appellant's appeal against conviction.

The appellant has also appealed against sentence on the ground that he is a first offender and that the court did not show lenience on him in sentencing him on both counts.

I find that several aggravating factors antecedent to the requirement for imposing a stiffer penalty for the offence of robbery with violence, as laid down in section 301 of the Penal Code, were present in committing the offences in this case. Section 301 on the punishment for the offence of robbery is worded as follows:

“Punishment 301. Any person who commits the felony of robbery shall be liable to imprisonment for fourteen years.

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or

immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be liable to be punished with death, or with imprisonment for life.”

I have found no proper reason to interfere with the sentences on both counts imposed on the appellant by the trial court even in the face of the ground raised by the appellant of being a first offender and other mitigating factors such as his young age. The trial court did actually consider these as mitigating factors in arriving at the sentences the court imposed on the appellant and his co-accused. I dismiss the appeal against sentences on both counts.

PRONOUNCED in open court at the Lilongwe District Registry
this 21st day of November, 2007.

E.M. SINGINI, SC.
J U D G E