

IN THE MALAWI SUPREME COURT OF APPEAL

AT BLANTYRE

M.S.C.A. CIVIL APPEAL NO. 1 OF 1986
(Being Criminal Appeal No. 10 of 1986)

BETWEEN:

RODRICK SELEMANI APPELLANT

- AND -

THE REPUBLIC RESPONDENT

BEFORE: The Honourable Mr. Justice Mtegha, J.A.
The Honourable Mr. Justice Mbalame, J.A.
The Honourable Mr. Justice Kalaile, J.A.

Appellant, present, unrepresented
For the State, Nyirenda, Principal State Advocate
Court Reporters, Gausi (Mrs)/Maore
Official Interpreter, Mthukane - Law Clerk

J U D G M E N T

MTEGHA, J.

The appellant in this case appeared before the Resident Magistrate sitting at Zomba charged with the offence of Robbery with Violence contrary to section 301 of the Penal Code. He was found guilty and convicted after a full trial, and sentenced to 8 years imprisonment with hard labour. His appeal to the High Court against both conviction and sentence was dismissed by Banda, J., on 9th October, 1986. He now appeals to this Court against that judgment. He has submitted five grounds of appeal which can conveniently be set out as follows:-

- (a) That there was insufficient evidence to warrant a conviction.
- (b) That since the prosecution did not produce a medical report it was wrong for both the trial and lower courts to conclude that the scars on the face of the complainant were made by a panga knife which was not produced in court; and

- (c) That the sentence of 8 years imprisonment with hard labour was manifestly excessive in view of the fact that he was a sickman.

It would, probably, be fitting if we briefly state the facts. It would appear that on the 8th of August, 1985, the complainant boarded a train to see his brother inlaw, Mr. Kachepa. When the train reached Lirangwe the appellant boarded it and sat next to the complainant. A conversation ensued in which the appellant said he knew the complainant's brother-in-law and that it would be shorter to his brother-in-law's house if he got off the train where the appellant was getting off. They both got off the train and the appellant took the complainant to his house where they had a meal prepared by the appellant's wife. At about 6 p.m. the complainant left for his brother-in-law's house, escorted by the appellant and two others. On the way the appellant and his friends hit the complainant, he fell down and was cut by the panga knife which the appellant carried. They took all his possessions and was stripped naked. Because he was completely naked he hid himself in the bush until the following morning; but when he approached people they ran away from him because they thought he was mad. Fortunately, a village headman arranged for the youth to arrest him and he was taken to police dressed in a sack. Police too did not believe his story until his brother-in-law and sister identified him. After extensive searches the appellant was arrested and was identified by the complainant.

The appellant denied to be involved in this case.

It has been submitted that there was insufficient evidence to warrant a conviction. We find there is no merit in this ground, the appellant and the complainant were together in the train; the appellant was described by the complainant, he described the clothes which the appellant was wearing and these clothes were found on the appellant.

It was again the appellant's ground of appeal that there was no medical report and no panga knife was found on him to prove that the scars found on the complainant were caused by the panga knife which was his. Again we found it difficult to entertain this ground of appeal.

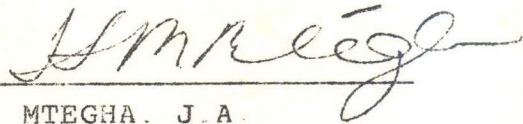
It was not necessary to produce a medical report; neither was it necessary for the prosecution to produce the panga knife.

Looking at the evidence in total, it is our view that the conviction by the Lower Court and the judgment in the High Court cannot be faulted. The appeal against conviction is therefore dismissed.

In relation to the appeal against sentence we are of the view that the sentence was merited. 8 years imprisonment with hard labour is a heavy sentence; but sight should not be lost that the complainant was almost killed; he was stripped naked and humiliated in public. We see no legal justification to interfere with it. The appeal against sentence is also dismissed.

DELIVERED at Blantyre on this 21st day of July, 1988.

Signed



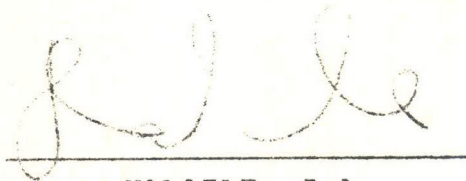
MTEGHA, J.A.

Signed



MBALAME, J.A.

Signed



KALAILE, J.A.