

THE STATE

Versus

SEMBULELO NDLOVU

And

HERMAN SHETO

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 24 FEBRUARY 2005

Criminal Review

NDOU J: The matter was referred to me for review by the scrutinising Senior Regional Magistrate, Western Division.

Briefly, the accused persons were properly convicted by a Western Commonage magistrate sitting at Entumbane. Nothing turns on the conviction. They were each sentenced to a fine of \$10 000 or default of payment three (3) months imprisonment, with an additional custodial sentence of five (5) months all suspended on condition of restitution. The facts relevant to the issue of sentence are the following. On 19 October 2002 and at around 2230 hours, the complainant was carrying out his duties as a metered taxi driver outside Bulawayo Magistrates' Court, Tredgold Buildings. The two accused persons approached and hired his taxi to take them to Entumbane Police Station. Before they got to Entumbane Police Station, but already in Entumbane suburb, the accused persons indicated to the complainant that they had arrived at their destination. The complainant stopped his vehicle to drop them. All of a sudden, the second accused person, who was seated in the backseat, grabbed hold of the complainant by the neck and demanded money from him at knife

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point. The first accused person who was seated in the front passenger seat also produced a knife and threatened to stab the complainant who was by then holding his co-accused's arm which had a knife. As a result the complainant submitted to the taking of his day's collections of \$8 000,00. The complainant managed to break free and ran away to seek help. The accused persons meanwhile took the ignition keys of the complainant's vehicle and disappeared. Unfortunately for them the first accused dropped his wallet in the vehicle resulting in their detection and arrest. The \$8 000 was not recovered.

The accused persons were convicted after a long trial. They were both young first offenders aged 23 and 22 years. I agree with the scrutinising Regional Magistrate that the sentence was disturbingly lenient. The sole explanation for such a lenient sentence is that the accused persons did not stab the complainant. The trial magistrate obviously attached undue weight to the factor and disregarded the aggravating features and precedents on the approach to sentencing in such matters. Imprisonment was a sad necessity for these accused persons. One of the functions of criminal law is to give expression to the collective feeling of revulsion towards such acts of violence by armed offenders. The objective, looking at it through a sociological eye, is the protection of innocent persons against intentional violence or any forms of intended harm. Criminalising is a way of dealing with this type of strongly disapproved conduct.

From the cases on review and appeal it is trite that this type of robbery is prevalent in urban centres – *Mutekuru v S* SC-84-85 and *Nkomo v S* AD 39-71.

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For robbery, imprisonment is normally justified even for first offenders – *Zuze v S* GS 261-81. Even where small amounts are stole without violence a custodial sentence is called for – *S v Nyathi* HH-405-83. The long and short of it is that robbery is a most serious offence. In *S v Mvute*; *S v Baby* 1985 (2) SA 61 (CK) at 62 it was observed-

“The offence consists of the two elements of violence and dishonesty. Normally an individual can avoid situations which lead to violence and the danger of his being assaulted by taking the necessary precautionary measures. Similarly, he can take steps to guard against his property being stolen. It is, however, a different matter when it comes to robbery. The victim cannot take precautions against robbery. In his day-to-day living he visits friends, goes to work and goes shopping. This is usually when robbers strike. Robbers often roam the townships in gangs, attacking innocent people, depriving them of their property and almost invariably injuring the victims, sometimes seriously. The persons robbed are more often than not women or elderly people who cannot defend themselves. It must also be remembered that robbery is always a deliberately planned crime” – see also *South African Criminal Law and Procedure – Volume II – Common Law Crimes* by PMA Hunt and 3rd Ed by JRL Milton at page 660.

In light of the foregoing the accused persons should have been sentenced to a custodial sentence in the region of four to six years.

Accordingly, I decline to certify these proceedings as being in accordance with true and substantial justice. I withhold my certificate.