

THE STATE

Versus

CHRISPEN MOYO

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 12 JANUARY 2009

Criminal Review

NDOU J: The accused was properly convicted by a Gweru Provincial Magistrate of robbery as defined in section 126(1)(a)(b) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. Nothing turns on the conviction. He was sentenced to a fine of \$900 000 or in default thereof 3 months imprisonment. An additional sentence of 3 months was imposed but wholly suspended for 5 years on conditions of future good behaviour. The sentence imposed is disturbingly lenient. The salient facts are the following. The complainant is an 18 year old female student at Gweru Polytechnic College. On the fateful day at 0530 hours she was on her way to the college when she was accosted by the accused who was in the company of an accomplice. They were actually following her. The accused grabbed the complainant by the neck from behind and forcibly took her Nokia 3310 mobile phone and handbag. The accused threw the handbag to his accomplice and told him to run away with it, which he did. The accused in turn ran away with complainant's mobile phone. The complainant raised alarm by screaming for help. Two members of the public came to her assistance. They managed to apprehend the accused's accomplice and recover the handbag. The accused disappeared from Gweru and was arrested in Kwekwe as a result of police investigations and not as a result of change of heart. Offences of robbery of mobile phones are very prevalent. The offence was committed by a gang of two who pounced on a young defenceless student who was on the way to school. The stolen property was valued at \$450 00 which at the time of the offence was a substantial amount. Although the property was recovered, it was as a result of police effort and not a change of heart on the part of the accused. Since the introduction of cellular phones this type of offence has escalated. This is so because people now move around with these valuable and essential tools of

communication. They are targeted by people like accused. For robbery, imprisonment is normally justified even for first offenders. Even where small amounts are stolen without violence prison sentences are called for – see *Zuze v S GS* 261-81; *S v Nyathi* HH-405-83 and *S v Ndlovu & Anor* HB-12-05. As rightly observed in *S v Mvute; S v Baby* 1985(2) SA 61 (CK) at 62:-

“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 P M A Hunt (3rd ED) at page 660.

A custodial sentence in the region of two to three years was called for *in casu*.

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