

THE STATE
versus
SAMUEL NHERERA

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 17 March, 2006

Criminal Review

BHUNU J: The accused was convicted on a charge of robbery. The conviction is proper as there was overwhelming evidence against him despite his denial.

The complainant and his girlfriend were at Chicken Inn outlet at Machipisa Shopping Centre on the 31st of December 2005 at around mid-day.

As they left the shop they were accosted by the accused and his accomplices who are still at large.

The complainant was thrown to the ground and relieved of his cellphone and cash all valued at \$16 000 000.00. Of that total only \$1 375 000.00 was recovered. The accused was arrested at a bar while feasting on the proceeds of his ill-gotten gains, on those facts the accused was sentenced to 24 months imprisonment of which 10 months were suspended on condition of restitution. Of the remaining 14 months imprisonment 3 months imprisonment was suspended on appropriate conditions of good behaviour. Total effective sentence, 11 months imprisonment.

It is needless to say having regard to the accused's moral culpability the sentence imposed by the trial court is hopelessly inadequate so as to induce a sense of shock. The complainant and his girlfriend were accosted and robbed in broad daylight in full view of members of the public. This was a premeditated organised crime executed with braze impugny and total disregard of the law. Robbery is fast becoming an increasingly common offence which is on the increase. There is need to put a stop to this trend. If people can be robbed in broad daylight in the middle of a shopping centre then, noone can be safe in this country. Failure on the part of the courts to pass stiff and deterrent sentences as happened in this case would certainly lead to chaos total anarchy and despondency. The law of the jungle which promotes the survival of the fittest will be the order of the day.

It is the duty of the courts to defend the weak and defenceless through passing stiff and deterrent sentences on convicted robbers such as the accused.

Members of the public look up to the courts for protection whenever their rights are violated. The courts must therefore, not be found wanting in discharging their duty to protect innocent members of the public as they go about their day to day business.

Thus magistrates should not hesitate to met out stiff penalties where these are warranted. They must take a cue from the superior courts which have taken a serious view of offences of this nature. In the case of *S v Mudondo* HH 60/90 the High Court indicated that for a robbery where little or no violence is used a sentence in the region of 4 to 5 years imprisonment is appropriate.

That position was confirmed by the same court on appeal in the case of *Michael Chikanya v S* HB 110-92. In that case the accused had robbed the complainant of \$15.00 with little or no violence. He was sentenced to 3 years imprisonment. The sentence was confirmed on appeal.

Having regard to the accused's moral culpability and turpitude I am unable to confirm these proceedings as being in accordance with real and substantial justice. I accordingly withhold my certificate.

BHUNU J:

OMERJEE J. agrees: