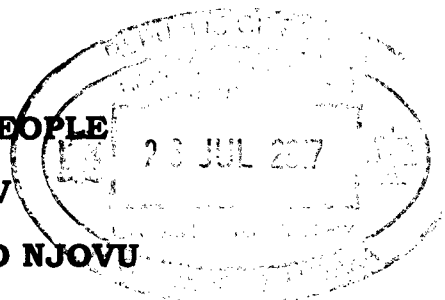


IN THE HIGH COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Criminal Jurisdiction)

HP/52/2017

THE PEOPLE
 V
DALITSO NJOVU



BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 26th DAY OF JULY, 2017

For the State : *Mrs P. Mulenga, Principal State Advocate, NPA*

For the Accused Person : *Mrs P.S.Mumbi, Charles Siamutwa Legal Practitioners, for Legal Aid Board*

J U D G M E N T

CASES REFERRED TO:

- 1. *George Nswana V The People 1988-1989 ZR 174***

LEGISLATION REFERRED TO:

- 1. *The Penal Code, Chapter 87 of the Laws of Zambia***

The accused person in this matter stands charged with three counts. In the first count he is charged with the offence of aggravated robbery contrary to Section 294 (1) of the Penal Code, Chapter 87 of the Laws of Zambia.

The particulars of the offence allege that Dalitso Njobvu on 14th June, 2016, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia jointly and whilst acting together with other persons

unknown, and whilst armed with a knife, and a sharp instrument did steal from Elias Mutale Mwansa a motor vehicle, namely Toyota Corolla registration number BAA 2834, valued at K45, 000.00, the property of Rita Mwale, and at or immediately before or immediately after the time of such stealing, did use or threaten to use actual violence to the said Elias Mutale Mwansa, in order to obtain or retain, or prevent or overcome resistance from its being stolen or retained.

In the second count the offence is aggravated robbery contrary to Section 294(1) of the Penal Code, Chapter 87 of the Laws of Zambia.

The particulars of the offence allege that Dalitso Njobvu on 3rd September, 2016 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together with other persons unknown, and whilst armed with knives and screw drivers did steal from Daniel Ntentemuka a motor vehicle namely, Toyota Vitz registration number BAD 5438 valued at K40, 000.00, the property of Daniel Ntentemuka, and at or immediately before, or immediately after the time of such stealing did use or threaten to use actual violence to the said Daniel Ntentemuka in order to obtain or retain or prevent or overcome resistance from its being stolen or retained.

In the last count the offence is aggravated robbery contrary to Section 294 (1) of the Penal Code, Chapter 87 of the Laws of Zambia.

The particulars of the offence allege that Dalisto Njobvu on 13th September, 2016 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together with other persons unknown, and whilst armed with a knife and sharp instruments did steal from Nevers Mwiinga a Toyota Spacio registration number ADC 2117, valued at K25, 000.00, the property of James Banda, and at or immediately after the time of such stealing did use or threaten to use

actual violence to the said Nevers Mwiinga in order to obtain or retain or prevent or overcome resistance from its being stolen or retained.

The accused person denied all the charges, and the matter proceeded for trial. The State called fourteen witnesses, while the accused person remained silent in his defence, and called no witnesses. The first witness was Lazarous Chiyayika. He testified that Daniel Ntentemuka, his childhood friend and a taxi driver, had approached and asked him to assist him purchase a vehicle. That he had advised him to purchase a vehicle overseas, as being a taxi driver, he needed to start with a new vehicle. That PW1 has used his details to import the vehicle, being a silver Toyota Vitz, but he never physically saw the vehicle, as at the time it came into the country, he was out the country on duty.

It was however his evidence that Daniel had called him whilst he was out of the country, saying that the vehicle needed to be registered, and that is how he had told him to get the documents from his house, and have it registered in PW1's name, and the change of ownership would be done later. That thereafter PW1 was informed that the vehicle was registered, and that around September 2016, when PW1 was preparing to come back to Zambia, Daniel had called him stating that he was in hospital, as the vehicle had been stolen.

When cross examined PW1 told the court that the proof that he had of the existence of the vehicle, was that it was registered in his name. He also told the court that the vehicle exists as he went to Kabwe to see it after it was recovered.

The second witness was Elias Mutale Mwansa, a taxi driver. PW2 testified that on 14th June, 2016 around 21:15 hours he was at the taxi rank at East Park Mall, outside the vehicle, when a gentleman approached him and asked him the fare to Nyumba Yanga. When PW2

stated that it was K80.00, the gentleman had volunteered to pay K100.00, and as they got into the vehicle, the gentleman had told him that he had two friends at Acacia Park, and he went to collect them.

That on his return, the gentleman sat in the front seat, while his two friends sat in the back. With regard to the visibility at East Park rank, PW2 testified that there is a billboard that lights up the area and the road, and that there are fluorescent tubes and smaller bulbs on the walls. Further that when he spoke with the gentleman they were very near each other, and were facing each other. They spoke for about four minutes.

It was also PW2's testimony that they used Thabo Mbeki Road from Acacia Park and when they reached Kalingalinga Filling Station PW2 bought fuel and they proceeded to Nyumba Yanga. He told the Court that when they reached Cross Roads Mall, the gentleman in front had asked him to pass in front, and that he would show him where to turn. That when they reached the turn at Nyumba Yanga Police Post, the gentleman asked him to turn left, and they left the tarmac into a gravel road. He further testified that they reached the gate at Cooperative College, and they stopped. PW2 stated that the gentleman asked him if he had airtime in his phone, and when PW2 agreed and gave him the phone, the gentleman had stepped out of the vehicle and went to speak on the phone.

It was stated that the gentleman was outside for about ten minutes, and he was able to see him as there were lights at the gate, and PW2 remained chatting with the gentleman's two friends who sat at the back of the vehicle. PW2 had then told one of the gentleman's two friends that he was on duty and their friend had delayed by talking on the phone, and that is how one of the friends had disembarked from the vehicle, and

followed him. That thereafter PW2 saw the gentleman enter the gate as he talked on the phone, and the two then came back. The gentleman who had booked PW2 sat in the back seat, while the friend who had gone out to call him now sat in the front seat.

That the gentleman who had booked PW2 grabbed him by the throat demanding to be given money, and PW2's wallet. That they struggled as the man grabbed his neck, and the person who sat in front grabbed him by the bomber he was wearing, and squeezed him. He stated that they struggled until they got out of the vehicle, and PW2 pushed the man who had sat in front, and they both fell outside. That even the man who had booked him went outside, and he got stones saying that he would kill PW2. However the struggle continued, and the man who had booked him tripped him, and PW2 fell down.

That that is how the man who had booked him told his friends that they should go and leave PW2 behind, and they got into the vehicle and drove off. Further in his testimony PW2 stated that he then got up and walked up to road, and went and reported the matter to Nyumba Yanga police station, where he was issued a medical report, and taken to Woodlands police.

He continued stating that from there an officer of Woodlands police took him to the University Teaching Hospital (UTH), where he was treated, and he returned the signed medical report to the police. He identified the medical report, and it was marked 'ID1'. PW2 told the court that on 30th June, 2016 he was called to Woodlands police in the morning, where he was asked to identify his attackers from an identification parade that had been mounted there.

His testimony was that there were between 8 to 10 people on the identification parade, and he identified the person who had booked and

attacked him among them. He identified the accused person as the person that he identified. PW2 testified that the vehicle that was stolen from him was a Toyota Corolla registration number BAA 2834.

In cross examination PW2 told the court that he was squeezed on the neck, and hit on the head. That the medical report shows that he had a laceration on his shoulder, and he stated that this was so as after they struggled, he was stabbed on the shoulder, and bled. That he had forgotten to state so in his evidence in chief. He further testified that it was the accused person who stabbed him, as he felt him remove something, and stab him.

He agreed having described the accused person to the police as being a bit tall and light in complexion, as well as stout. PW2 told the court that he had not forgotten the accused person although he had walked right past him in the court room when asked to identify him, stating that the accused person had faced down when he had walked past him, and moreover there were a lot of people in the court room.

PW3 was Rita Mwale. She testified that she is the owner of the motor vehicle Toyota Corolla registration number BAA 2834, pearl in colour, which operates as a taxi. She stated that on 15th June, 2016 around 06:00 hours she received a phone call from her driver's friend who informed that her driver Elias Mwansa had been attacked the previous night around 21:00 hours, and was stabbed with a screw driver, by people who had booked him, and that he was at the hospital.

She identified the white book for the vehicle, and it was produced and marked as 'P2'. It was PW3's testimony that after the driver was discharged from the hospital he had gone to her house and explained that the vehicle was stolen together with his phone, wallet, driving licence and money. She gave the value of the vehicle as K45, 000.00.

Further in her evidence, PW3 told the court that on 20th June, 2016 she was phoned by a police officer of Kanyama police asking her if she had lost anything, and she told him that her vehicle had been stolen. He had asked her to go there and identify a vehicle that they had recovered. That when she went there she found her vehicle, but it had no number plates, but the road tax and fitness discs were still on the windscreen of the vehicle. She confirmed that the vehicle was hers by virtue of the discs on the windscreen, and the registration details of the vehicle. PW3 identified and produced the vehicle and it was marked 'P3'.

In cross examination she read the engine number off the vehicle as 4AE-FE1587, and the chasis number as AE1145026762.

Enock Mpofu a mechanic of Makeni was PW4. He stated that he operates from Kwashuka in Makeni, and that on 17th June, 2016, around 14:00 hours a client had taken a vehicle to the garage, and had informed him that the vehicle was not changing gears, and that the gear box should be removed. That after PW4 removed the gear box, he had asked the man who had taken the vehicle there where the replacement gear box was, and he was informed that someone had it.

PW4 testified the man had called someone who had told them that they should go to Simoson Hotel, and there they were directed to a place behind Simoson Hotel where they found a vehicle pearl or silver in colour, parked off the road. The man had told him that they should remove the gear box from the vehicle that they had found, and that they could do so at a nearby house where he lived at his uncle's house. When asked by PW4 why he wanted to remove a gear box from a new vehicle, the man had responded that he wished to replace the engine in the vehicle with an ordinary one.

Further in his evidence PW4 stated that he insisted that he could not open the vehicle as it was new, unless the man gave him his uncle's phone number, and the man had called his uncle, but the call did not go through. That he had also asked the man why the vehicle had discs on the screen and no number plate, and the man had answered that the number plate had been removed during the campaigns. He continued stating that he had told the gentleman that they should go to the garage to remove the gear box, and he asked the man that he works with that he drives in the same vehicle with the gentleman who had taken the vehicle so that the gear box could be fitted, and PW4 would drive behind them.

That as they drove to the garage, PW4 had phoned the Criminal Investigations Officer (CIO) Munsanje of Kanyama police raising concerns over the vehicle the man had gone with, and Munsanje had advised PW4 to chat with the man as he found his way there, so that he could find him. It was his evidence that after fifteen minutes the police had arrived, and the man on seeing them, started running away, but he was chased, caught and apprehended. He was not cross examined.

PW5 Charles Banda is a police officer of Woodlands police. In his testimony he stated that he is a scenes of crime officer, and he told the court that he holds a certificate in crimes scenes obtained from Lilayi police training college, and had also been trained in statistics, record keeping, forensics, evidence collection and had done a basic course in criminal investigations. That he has been a police officer for nineteen years, and had been in the crimes scene department, for about six years.

With regard to the matter before court, he testified that on 30th June, 2016 around 11:00 hours, he was asked to attend to an identification parade for an aggravated robbery case in which the suspect was Danny Zulu Dalitso Njobvu. He stated that there were ten men on the parade,