

**IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT KABWE**
(Criminal Jurisdiction)

APP. NO. 58/2021

BETWEEN:

AARON PHIRI

AND

THE PEOPLE



APPELLANT

RESPONDENT

CORAM: Mchenga DJP, Sichinga and Muzenga JJA
On 18th January 2022 and 22nd April, 2022

For the Appellant : *Ms. A. Banda, Legal Aid Counsel-Legal
Aid Board*

For the Respondent : *Mrs. C. Simwatachela-Mwila, State
Advocate - National Prosecution Authority*

JUDGMENT

Sichinga, JA delivered the Judgment of the Court.

Cases referred to:

1. *David Dimuna v The People* 1988-89 ZR 199
2. *Nyambe v The People* (1973) Z.R. 228
3. *Chate v The People* (1975) Z.R. 298
4. *Lajabu v The People* (1973) Z.R. 74
5. *Chimbini v The People* (1973) Z.R. 191
6. *Saluwema v The People* (1965) Z.R. 4
7. *John Timothy and Feston Mwamba v The People* (1977) Z.R. 394
8. *Luckson Kacha Ngosa v The People* Appeal No. 251 of 2012
9. *Jonas Nkumbwa v The People* (1983) 103

10. ***George Nswana v The People (1988-1989) Z.R. 174***

Legislation referred to:

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

1.0 Introduction

1.1 The appellant was convicted of the offence of aggravated robbery contrary to **section 294(2)** of ***the Penal Code***¹. The particulars of the offence were that in the first count, Aaron Phiri and Chimbalo Marjory, on 14th February 2015 at Lusaka, jointly and whist acting together with persons unknown and whilst armed with two AK47 rifles did steal from Mate Nyambe a Sony laptop, two stroke motor bike oil, ZMW798 cash, 43 litres of petrol altogether valued at ZMW4,703 the property of Nilkant Filling Station, and at or immediately before or immediately after the time of such stealing did use or threaten to use actual violence to the said Mate Nyambe in order to obtain, retain or prevent or overcome resistance from its being stolen or retained.

1.2 In the second count, it was alleged that Aaron Phiri and Chimbalo Marjory, on 24th February 2015 at Lusaka, jointly and whist acting together with persons unknown and whilst armed with two AK47 rifles did steal a Sony plasma TV, ZMW6.880 cash, MTN assorted airtime cards, five MTN small cellphones altogether valued at ZMW8,062 the property of Eunice Mwansa, and at or immediately before or immediately

after the time of such stealing did use or threaten to use actual violence to the said Eunice Mwansa in order to obtain, retain or prevent or overcome resistance from its being stolen or retained.

- 1.3 In the third count, it was alleged that Aaron Phiri and Chimbalo Marjory, on 29th November 2014 at Lusaka, jointly and whist acting together with persons unknown and whilst armed with a crew harmer and two building blocks did steal from No. 41276 Constable Shambana two AK47 rifles serial number 562919289 and 4 rounds of ammunition valued at USD370 the property of Zambia Police Service and at or immediately before or immediately after the time of such stealing did use or threaten to use actual violence to the said Constable Shambana in order to obtain, retain or prevent or overcome resistance from its being stolen or retained

2.0 Evidence in the court below

Count 3

- 2.1 The prosecution's first witness was Constable Chip Rashid Shambana (PW1) who stated that on 25th November 2014 he reported for work around 23:00 hours. At around 24:00 hours, a certain man came to him and said he had a breakdown and the owner of the car advised him to park it at the police station. He allowed the man to park the car and around 02:00 hours, the same man returned pushing a Toyota Corolla with

two other people and they parked the car within the police precinct.

- 2.2 Thereafter, the trio approached PW1 while he sat in his car with his AK47 rifle on his lap. He opened the window to talk to the man who came earlier and as he was writing down some details, two men grabbed his gun and one of them hit him on his head several times with a hammer. Another person broke the car window and hit him to unconsciousness with a stone.
- 2.3 PW1 narrated further that when he came to consciousness, he called Chief Inspector Phiri and informed him of the incident. He then drove to the next police post and obtained a medical report. Later, he drove to Levy Mwanawasa Medical Hospital for treatment. He also stated that two AK47 rifles were missing, which he positively identified in court.
- 2.4 When cross examined, PW1 stated that he could not recognize his assailants as the attack took place at night, in the dark but he confirmed that there was no female. He also said that he saw the car that was brought to be parked at the police post, as it was parked under light.
- 2.5 PW2 was Chief Inspector Anthony Phiri, who testified that on 24th September 2014, he allocated two AK47 rifles to Roma Police Station and on 29th November 2014, he received a call around 02:00 hours from Constable Shambala Chip who

reported that he had been attacked by criminals. He found the Constable receiving treatment at Levy Mwanawasa Hospital and observed that he had swollen hands and a deep cut on his head. He was also informed that two firearms had been stolen and said they were later recovered by Central Police, bearing the same serial numbers as the ones he had allocated to Roma Police Post.

Count 2

- 2.6 PW3 was Eunice Mwansa, a receptionist at Nsimbi Yanga Lodge, who told the trial court that she was at work on 13th February 2015 when one man entered the reception around 02:00 hours accompanied by two guards who also worked at the lodge. She also saw another man standing at the door. The two men pushed the guards down and ordered her and her colleague to lie down and demanded money from her. When she said she had no money, she was hit on her head with a gun and one of them stepped on her head. The two men then grabbed two cell phones, K100 from the table, a black 42-inch Sony plasma TV, K2,800.00 cash and airtime coupons worth K4,000 for Zamtel, Airtel and MTN.
- 2.7 PW3 further told the court that the robbery took place in less than 15 minutes, during which she was threatened to be raped but was not raped. She also stated that the light at the reception was on when all this transpired and that when their

assailants finally left, PW3 and her colleagues reported the incident to Matero Police. After two weeks, she was requested to identify some recovered items and she identified the plasma TV, which she also positively identified in court. She also stated that she could recognize one of the attackers, but he was not present in court. She told the court that there was no female amongst the assailants.

2.8 Martin Muyunda, a security guard at Nsimbi Yanga Lodge, was the fourth witness for the prosecution. PW4 told the court that on 13th February 2015, he was approached by a certain man in a Toyota Corolla around 02:00 hours, who inquired about the availability of rooms at the lodge. He told the man that the lodge was fully booked and the man asked him to open the gate as he wanted to see one of the guests there. Three people then came out of the car, of which two had guns. They apprehended the other guards and bundled them all in one room at the reception. The attackers then got away with a 42-inch plasma TV, which he identified in court, and their cell phones.

2.9 Betty Mutende (PW8), a receptionist at Nsimbi Yanga Lodge, testified that on 13th February 2015 around 02:00 hours, some thieves entered the reception area armed with two guns and ordered her and her colleagues to lie down. As the room was well lit, she could see them. She stated that she was hit with a gun butt on her forehead because she kept looking to

observe what was happening. The aggressors then got away with money and a Sony plasma TV. She was later called for an identification parade but could not recognize anyone. When cross examined, she stated that she did not see any woman among the assailants.

Count 1

2.10 John Silwimba, a fuel attendant at Puma Service Station along Great East Road, testified as PW5. He testified, in relation to the first count, that on 14th February 2015 around 01:00 hours, he was alerted by one of the guards that a car had come to the garage. He then approached the car- a blue Toyota Corolla registration number AAZ 4530 and he was requested to fill the tank with petrol. As he was filling the tank, one person came out of the car with a gun in his hands and ordered PW5 to show him where the other fuel attendants were and when he did so, they were all ordered to lie down. The robbers then got away with tins of motor oil.

2.11 PW5 also told the court that a few days after the incident, he was invited to an investigation parade where he identified the appellant as the driver of the vehicle which he had filled with a tank of petrol. He also identified four oil containers in court.

2.12 PW6 was Detective Sergeant Gawari Zulu, whose testimony was that on 13th February, 2015, Constable Phiri and he were deployed to guard Puma Filling Station along Great East Road. He narrated that they reported for work around 20:00 hours and took their positions in an unfinished building. PW6 was armed with an AK47 rifle while the other officer was not armed. They were both clad in the same uniform as the petrol attendants to disguise themselves as civilians.

2.13 He further told the court that around 01:00 hours, his colleague alerted him that some criminals were harassing petrol attendants and he tried to fire some warning shots, but his gun jammed. He was then approached by an armed man who hit him with a gun butt and ordered him to lie down. His assailant took away his phone, Police identification card and K15. He was later called for an identification parade but he could not recognize anyone. In cross examination, he stated that it was one of the petrol attendants who identified one of the robbers, and that from where he laid in the unfinished building, he could not tell whether the thieves came in a vehicle.

2.14 Constable Paul Phiri was PW7. In his testimony, he told the court that on 13th February 2015, he and Constable Phiri were manning Puma Filling Station along Great East Road and around 01:30 hours he saw a black Toyota Corolla registration

number AAZ 4530 and one of the attendants went to attend to it but took long, so he became suspicious. After a while, one man came out of the car and began to approach them and PW7 noticed the butt of a gun protruding from his coat and he informed his colleague that they were under attack. PW7 then hid under a sink and he could see the said man grabbing four oil tins, money from the attendants and a laptop. The attackers were gone within five minutes.

2.15 Chief Inspector Matilda Busiku (PW9), a ballistic expert at Force Headquarters, testified that on 21st February 2015, Detective Mfule of Anti-Robbery Squad at Lusaka Central Police submitted to her two AK47 rifles serials numbers BK9101 and 562919289, eight ammunitions and one empty cartridge for examination. The rifles were in good working condition and she found that the spent cartridge allegedly picked from a crime scene did not match the two rifles. Therefore, could not have been fired from either of the two rifles. However, she added that the rifles are dangerous military weapons capable of causing fear, harm, injury or death to a person or animal once fired, and that in Zambia, the said weapons are restricted for use by defence and security personnel.

2.16 Detective Sergeant Spider Chola (PW10), from Lusaka Anti-Robbery Squad, testified that on 13th February 2015, he

received a report that some thieves had attacked Puma Filling Station along Great East Road. He rushed there and was given information to the effect that about four criminals with two guns and driving a dark blue Toyota Corolla registration number AAZ 4530 got away with five litres of castrol oil, motorbike oil, a laptop and fuel which was pumped in the same motor vehicle worth K400.

2.17 PW10 narrated further that together with his team, they targeted Chipata Compound in search of the criminals and they spotted a motor vehicle of the same description parked at a night club. They ambushed the occupants and a middle aged man pulled out and drove along Chipata Road as they pursued him. He stopped at one point and picked up a lady, and he was later intercepted near Chipata New Market. After questioning the driver, PW10 was informed by the appellant that he was with others who hired him and that he had dropped them in Chunga Compound.

2.18 It was also PW10's testimony that the appellant took them to a house in Chunga Compound where they found a lady named Majory Chimbalu (A2). They searched the house and recovered engine oil, a 42 inch Sony plasma TV and two AK47 rifles serial numbers 562919289 and 1964BK9101 and five live ammunitions. The two ladies and the driver of the motor vehicle were detained. The same morning, PW10 received a

docket of aggravated robbery from Eunice Mwansa, a receptionist at Nsimbi Yanga Lodge. It was reported that armed robbers got away with a Sony plasma TV, airtime coupons and cash. He identified these items in court.

2.19 In cross examination, the witness re-iterated that the appellant was trailed from the night club until he was intercepted in the company of a lady and he led them to Chunga Compound where A2 was apprehended. He denied that the appellant led him and his fellow officers inside the night club where he showed them one of the people who booked him named Mike. He also denied that it was Mike who led them to A2. He admitted that A2 told them that the items they found were left with her by her boyfriend named Raster, whom she called in their presence and he said he would come but he did not show up.

3.0 The defence

3.1 In his defence, the appellant (DW1) gave sworn evidence and did not call any witnesses. He testified that he worked as a call boy for taxis at a market in Chipata Compound and on 5th February 2015, he was standing near a car at Kachulu Night Club when in Chipata Compound when someone came out of an unregistered motor vehicle, grabbed him and asked the whereabouts of his friends who he had dropped off. He denied being the owner of the car and pointed at the owner of the car

whose name was Mika Zulu. They apprehended the said Mika and put him in the back seat of the car while the appellant was thrown in the boot. When they got to Chunga, they removed him from the boot and placed him between two people in the backseat of the same Toyota Corolla registration number AAZ 4530, dark blue in colour.

3.2 He stated further that he was taken to a certain house in Chunga which he did not know and showed him oil containers, a television and two guns. They also showed him a picture of a man with dreadlocks and promised that they would release him and not kill him if he showed them were the man was, but the appellant denied knowing him and suggested that Mika Zulu could know him, as the appellant did not even know how to drive a car. They then took him to a lodge in Kanyama Compound, ordered the guests to parade themselves outside and asked him to identify the people he knew, but he denied knowing any of them. He was later taken to the same house in Chunga where they picked the lady they had found and the two were taken for further interrogations and beatings.

3.3 The appellant testified further that he was taken to his house in Chipata Compound and they searched the house but did not find anything. They also went to Garden Compound to search his brother-in-law's house but did not find anything. When cross examined, the appellant stated that he was just a

call boy and he did not know how to drive, and that he subsequently told the Police that he is a driver because they beat him and threatened to kill him. He admitted that on the night in question, he was found sitting on the bonnet of a Toyota Corolla which was not his.

3.4 A2 stated in her defense that on 14th February 2015 around 04:00 hours her boyfriend, Rodgers, called her and told her he was on his way to see her. He arrived with a black television, oil containers and one suitcase, which he left with the intention of coming back later that day but he did not. Around 06:00 hours, a policeman knocked at her door and demanded to see her husband, but she told him she only had a boyfriend, who was not around. They told her that they had followed the items brought by her husband. Around 16:00 hours, they began to collect the items they found and as that was happening, her boyfriend called. She put the phone on loudspeaker and he told her he would arrive from Mpika at night. She was then locked up.

3.5 In cross-examination, she said that she was not shown the contents of the suitcase brought by her boyfriend and that she was only shown his photograph. She admitted that the other items shown to her in court, other than the two guns, were recovered from her house. She denied knowing anyone by the name of Mike or Mika.

4.0 Findings and decision of the lower court

4.1 The learned trial Judge considered the evidence led by both the prosecution and defence and made the following findings:

- i) The appellant was not being truthful when he denied having led the police to the house of A2 and having showed them someone by the name of Mika as the owner of the car on whose bonnet he was found sitting. The court also did not believe his evidence that he was just a call boy who did not know how to drive, and added that his demeanor was not credible, as he misled the court with lies.
- ii) The evidence of the arresting officer PW10 was solid and unshaken in cross-examination and he had no reason to fabricate evidence against the appellant. In this regard, the learned Judge applied the case of **David Dimuna v The People**¹.
- iii) As regards the first and second count, the trial court found that the prosecution had established its case against the appellant beyond reasonable ground. However, in relation to the third count, the court was not convinced that the appellant was part of the mob that attacked a police officer and got away with two gun. The court therefore acquitted him on that count.

- iv) In relation to A2, the learned Judge was of the view that she was only implicated for being found in possession of the alleged stolen property which she said was left with her by her boyfriend who was on the run and with whom she had spoken on the phone in the presence of the police.
- v) The lower court referred to **section 319 of the Penal Code** *supra* and stated that an inference of guilt cannot be drawn from possession of stolen property unless it is the only inference that can reasonable be drawn. The court believed the explanation given by A2, as being reasonably true, more so that in all the robberies pertaining to the three counts, there was no mention of a lady being part of the robbers.
- vi) The trial court acquitted A2 on all counts, having found that the prosecution failed to establish their case against her beyond all reasonable doubt.

5.0 The appeal

- 5.1 Displeased with the decision of the trial court, the appellant appealed to this Court advancing one ground of appeal as follows:

- i) ***That the learned trial court erred in law and fact when it convicted the appellant that he was part of the people that staged two robberies in counts two and three.***

6.0 **Appellant's heads of argument**

6.1 Ms. Banda, legal aid counsel, relied on written heads of argument filed into court on 13th January, 2022. In support of this appeal, counsel submitted on behalf of the appellant that there was no strong identification evidence linking the appellant to the offences because PW5 was an unreliable witness as he told the court that he only gave the police officers a general description of the appellant, that is; medium height, small build and dark complexion. Further, that the witness admitted in court that there are several other persons who can fit that description.

6.2 Counsel cited several authorities in support of this submission, including ***Nyambe v The People***² from which the following holding was quoted:

“The greatest care should be taken to test identification. The witness should be asked, for instance, by what features or unusual marks, if any, he alleges to recognize the accused, what was his build, what clothes he was wearing, and the circumstances in which

the accused was observed- the state of the light, the opportunity for observation, the stress of the moment- should be carefully canvassed.”

- 6.3 On the same principle, the cases of ***Chate v The People***³, ***Lajabu v The People***⁴ and ***Chimbini v The People***⁵ were referred to. It was argued further that A2, who was acquitted, told the court that at the time the alleged stolen items were brought to her house by her boyfriend Rodgers, he came alone and not with the appellant. As such, there was no connecting link to inescapably come to the conclusion that the appellant was part of the people that staged the two robberies.
- 6.4 The case of ***Saluwema v The People***⁶ was cited to the effect that where the accused's case is reasonable possible although not probable, then reasonable doubt exists and the prosecution cannot be said to have discharged its burden of proof. We were thus urged to quash the conviction and set aside the sentence.

7.0 Respondent's heads of argument

- 7.1 The state's response to the appellants lone ground of appeal was that PW5's opportunity to observe was reliable because of the reasons given by the trial court. The learned state advocate

also stated that the witness clearly identified the appellant, and the latter did not deny that he had been seen by PW5, thereby making the identification unambiguous and reliable.

7.2 Counsel stated further that PW5 gave a description of the person he saw, whom he recognized again at the identification parade, which was properly conducted in accordance with rules of parade. That the appellant's contention that there was no opportunity for reliable identification must be dismissed because evidence on record shows that the incident took 10 minutes and there was enough light to identify someone.

7.3 As regards the appellant's reliance on the case of *Lajabu v The People*⁴, counsel submitted that the case is misplaced as it in fact favours the state, because the record shows that PW5 clearly gave a detailed identification of the appellant by mentioning the kind of clothing he wore and stating his physical description. In totality, counsel submitted that the appeal should be dismissed for lack of merit and that the findings of the trial court be upheld.

8.0 Our decision

8.1 Having examined the judgment of the lower court and considered the arguments in support of and in response to this appeal, we will proceed to determine this appeal.

- 8.2 From the record, it appears that the evidence of the prosecution that significantly implicated the appellant was mainly the testimony of two witnesses: firstly, PW5, who identified him at a parade as regards the 1st count relating to the robbery at Puma Service Station; secondly, PW10, who apprehended him and whom the appellant led to the place where items stolen in respect of all the three counts were recovered. The trial court accepted the evidence of these two witnesses and relied on it.
- 8.3 The appellant's main argument in this appeal is premised on the reliability of the evidence of identification by PW5 in respect of the 1st count, to the effect that he was the driver of the motor vehicle that was used to stage an armed robbery at Puma Filing Station on 14th February, 2015. We have taken note of the authorities submitted in support of this position, suggesting that PW5 only gave a general description of the appellant. The appellant is not challenging the propriety of the identification parade where he was identified by PW5 as having been the driver of the blue Toyota Corolla.
- 8.4 The record shows that PW5 told the court the appellant's features as he perceived them on the material day and that he later identified the appellant at a parade. He then further pointed him out in court. This is the totality of PW5's evidence relating to his identification of the appellant. What counsel is challenging in this appeal is that in examination-in-chief, PW5 gave a rather general description of the appellant and submits

that on that basis, and following the guidance of the Supreme Court in the cases cited, we should disregard PW5's evidence relating to the identification of the appellant.

- 8.5 In the **Nyambe case**², the court also held that, "*the adequacy of evidence of personal identification will depend on all the surrounding circumstances and each case must be decided on its own merits.*" As such, we will consider the circumstances under which the identification was initially made- that is; the state of the light, the opportunity for observation, the stress of the moment.
- 8.6 The opportunity to observe was such that the witnesses stated that the incident took about 10 minutes, during which he was ordered to fill fuel into the vehicle that the appellant was driving. This aspect, coupled with the length of time the incident took, that is, about 10 minutes, plus the evidence that there was sufficient lighting at the service station when the incident took place. Our view is that the reliability of this evidence was not compromised. As such, we find no reason to interfere with the trial court's reliance on the evidence of PW5 relating to the identification of the appellant, which placed him on the scene.
- 8.7 In any event, the appellant was also significantly implicated by the evidence of PW10 relating to how the appellant was found in possession of the vehicle bearing the same number plate as

one described by PW5, and that he led the officer to the place where the stolen items were recovered. This evidence remained unshaken and the trial court relied on it in securing the conviction.

8.8 Although this issue has not been raised by the appellant, we note that despite being charged under **section 294(1) of the Penal Code** *supra*, the appellant was convicted and sentenced pursuant to **section 294(2) of the Penal Code**. The Supreme Court has in various cases pronounced itself on the establishment of an offence under *section 294(2)*. In **John Timothy and Feston Mwamba vs. The People**⁷ it was held that:

- “(i) **To establish an offence under Section 294 (2) (a) of the Penal Code the prosecution must prove that the weapon used was a firearm within the meaning of the Firearms Act, Cap 111, i.e. that it was a lethal barreled weapon from which a shot could be discharged or which could be adapted for the discharge of a shot.**
- (ii) **The question is not whether any particular gun which is found is alleged to be connected with the robbery is capable of being fired, but whether the gun seen by the eye-witnesses was**

so capable. This can be proved by a number of circumstances even if no gun is ever found.

8.9 In the case of **Luckson Kacha Ngosa v The People**⁸, the Supreme Court referred to its decision in **John Timothy** and stated as follows:

“As we stated in the case of John Timothy and Another, the issue is whether the firearm allegedly used was capable of being fired. In this case, no such evidence was led by the prosecution. In the circumstances, it would be unsafe for us to uphold the conviction under Section 294(2). We set aside the conviction under Section 294(2) and we also set aside the death sentence. Instead, we substitute a conviction of aggravated robbery contrary to Section 294(1).”

8.10 In the case of **Jonas Nkumbwa v The People**⁹ the Supreme Court held *inter alia* that:

“(ii) It is unsafe to uphold a conviction on a charge of armed aggravated robbery where there is no direct evidence of the use of firearms.”

8.11 To apply these authorities *in casu*, we are mindful that even though the state, through the testimony of PW9 led evidence to qualify the recovered guns as a firearm within the meaning of the *Act*, it was not established that it was the one used at the scene, as the spent cartridge recovered at the scene did not match the firearm found at the place where the appellant allegedly led the police officers. As such, there is no evidence that would warrant an inference that the firearms recovered at the place where the appellant led the police were the ones used to commit the offences in respect of the first and second counts.

8.12 From our reading of the judgment, we are satisfied that the learned Judge did not apply his mind to the requirement to establish that the firearms recovered were the ones used to commit the offence, especially given that the firearms recovered were found to have been incompatible with the spent cartridge. The learned Judge ought to have pronounced himself on this aspect before proceeding to convict on the basis of **section 294(2)** and imposing the death sentence.

8.13 As regards the second count, the material witness who could have identified the assailants at the robbery at Nsimbi Yanga Lodge in Matero was PW3, but she could not recognise the appellant. There was therefore, no evidence of identification placing the appellant on the crime scene. Be that as it may, the record shows that among the items that were recovered

from the house where there appellant led PW10 and other police officers were items reported to have been stolen at Nsimbi Yanga, including a 42 inch Sony plasma TV, which PW3 positively identified when exhibited at trial. These items, according to PW10's testimony, were recovered during an operation that took place the night after the robbery.

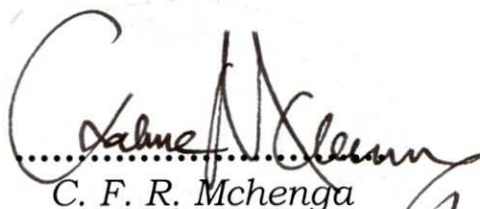
8.14 The circumstances leading to the recovery of the stolen items raise the issue of recent possession. The appellant did not give a reasonable explanation of how he came into the possession of the property that had recently been stolen during the robbery in respect of count two, as the learned trial Judge discounted the appellant's testimony as essentially untruthful. We refer to the case of **George Nswana v The People**¹⁰ where the Supreme Court guided as follows:

“The inference of guilt based on recent possession, particularly where no explanation is offered which might reasonably be true, rests on the absence of any reasonable likelihood that the goods might have changed hands in the meantime and the consequent high degree of probability that the person in recent possession himself obtained them and committed the offence...”

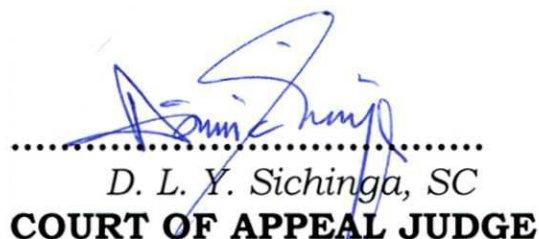
8.15 Given the unlikelihood that the stolen property changed hands a day after the robbery, coupled with the evidence that

the appellant led the police to where the stolen items were recovered, we are of the firm view that the circumstances herein warrant an inference that the appellant himself was a participant in the commission of the offence. We accordingly uphold the conviction as regards the second count.

8.16 Having found that the lower court did not satisfy the requisite elements for a conviction under *section 294(2)*, we are guided by the authorities we have earlier cited in our decision to set aside the conviction under *section 294(2)* as well as the death sentence. Instead, we substitute a conviction of aggravated robbery contrary to **section 294(1) of the Penal Code** and impose a sentence of twenty years imprisonment with hard labour for count one and twenty years imprisonment for count three, the same to run consecutively.



C. F. R. Mchenga
DEPUTY JUDGE PRESIDENT



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D. L. Y. Sichinga, SC
COURT OF APPEAL JUDGE



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K. Muzenga
COURT OF APPEAL JUDGE