

MOLDEN AT LUSAKA

(Criminal Jurisdiction)

HAGAI KALALA

Appellant

v

THE PEOPLE

Respondent

CORAM: Silungwe, C.J., Ngulube, D.C.J., and Gardner, J.S.,

17th November, 1987.

W. Henriques , Senior Legal Aid Counsel, for the appellant

K.C. Chanda, Senior State Advocate, for the respondent

J U D G M E N T

Silungwe C.J., delivered the judgment of the court.

The appellant was charged jointly with three others with aggravated robbery, contrary to section 294 of the Penal Code, Chapter 146 of the Laws of Zambia, the allegation being that on November 15, 1982, at Lusaka, jointly and whilst acting together with other named persons stole one motor vehicle, namely, a Mazda registration EU 5572, one wrist watch and K14.00 in cash, altogether valued at K4,579.00, the property of Mukendi Kasemile, and that at or immediately before or immediately after the time of stealing the property aforementioned, he and others used or threatened to use actual violence to the said Mudendi Kasemile in order to prevent resistance to the said theft of the property. The other persons who had been jointly charged with the appellant were acquitted, but the appellant was convicted as charged.

It is quite clear in this case, as the learned senior state Advocate has properly conceded, that the only evidence against the appellant is that he was found in possession of the stolen wrist watch belonging to the complainant, and that as the inference of guilt on the charge of aggravated robbery was not the only one

reasonably possible, it is a proper case of receiving stolen property. The learned counsel for the appellant concurs.

In these circumstances, the appeal is allowed, the conviction is quashed and the sentence of twenty-five years imprisonment with hard labour is accordingly set aside. We, however, substitute a conviction for the offence of receiving stolen property, contrary to section 318(1) of the Penal Code, Chapter 146, and impose a sentence of three years imprisonment with hard labour with effect from November 23, 1982.

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A.M. Silungwe
CHIEF JUSTICE

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M.S. Ngulube
DEPUTY CHIEF JUSTICE

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B.T. Gardner
SUPREME COURT JUDGE