IN THE SUPREME COURT OF ZAMBIA **SCZ APPEAL NO.51/99**
HOLDEN AT NDOLA
(Criminal Jurisdiction)

PETER CHIBANGA	**APPELLANT**
VS	
THE PEOPLE	**RESPONDENT**

Coram: Sakala, Chirwa and Chibesakunda JJS
8th September 1999.

For the Appellant: Mr. S. W. Chirambo, Acting Deputy Director of Legal Aid.
For the Respondent: Mr. R.O. Okafor, Principal State Advocate.

J U D G M E N T

Sakala JS delivered the Judgment of the Court.

The appellant was sentenced to the mandatory minimum sentence of 15 years imprisonment with hard labour upon his conviction for aggravated robbery on two counts. The sentence was made to run concurrently.

The particulars on the first count were that on 16th November, 1997, at Ndola in the Ndola District of the Copperbelt Province of the Republic of Zambia, jointly and whilst acting with four other men unknown, he robbed Ms. C. Chuba a number of household items valued at K750,000 and used violence at the time of that robbery. The particulars of the offence in the second count were that on 18th November again in Ndola whilst acting together with other persons unknown, being armed with a Panga, robbed Mr. S. Masumba a number of household items valued at K860,000 and used violence at the time of the robbery. He has appealed against both conviction and sentence according to the notice of appeal. But counsel indicated that the appeal is against conviction only.

The prosecution's evidence conclusively established that on 16th November 1997, at night, PW1, the complainant in count one, was robbed of the items as set out in the indictment, by a gang of intruders. This incident was witnessed by PW2. They were threatened. The evidence also conclusively established that on 18th November 1997, at night, PW3, the complainant in count two, was also robbed of the items set out in the indictment. The prosecution evidence connecting the appellant to the first count

was given by PW2. She testified that on the day of the robbery she recognised the appellant as her former school mate. She gave his first name to the police. She knew the house of his grand father. She identified the appellant at the parade eight days after the incident. On count two the appellant is connected by the evidence of the complainant, PW3, who testified that on the day of the incident he talked to the appellant before the light in the house was switched off. The next day, hardly 24 hours after the incident, he met the appellant on the way. Upon alerting the police, the appellant runaway. The appellant was apprehended after a chase and handed over to the police.

In his defence the appellant denied being involved in any of the two robberies. The learned trial judge considered the evidence of the identification by PW2 and the evidence of PW3 of apprehending the appellant when he was running away from them. The court accepted that there was no mistaken identification by PWs 2 and 3. The court accepted their evidence in total and convicted the appellant on the two counts.

In this court, Mr. Chirambo, the Acting Deputy Director of Legal Aid, advanced three grounds of appeal. These grounds centered on the attack of the evidence given by PWs 2 and 3 in relation to the identification of the appellant. The gist of the submission on these three grounds is that these two witnesses must have been mistaken in their identification of the appellant. Mr. Chirambo pointed out that both incidents happened at night. In both cases the intruders ordered the occupants of the houses to cover themselves. In both incidents the lights were switched off. It was counsel's submission that an honest mistake in identification in these circumstances where the witnesses must have experienced panick could not be ruled out. Mr. Chirambo pointed out that no stolen items were found on the appellant. He contended that the evidence of PW2 that she knew the appellant was denied by the appellant. He submitted that in either count the identification was that of a single witness. He also pointed out that the identification parade at which PW2 identified the appellant was irregular.

On behalf of the State Mr. Okafor supported the convictions on both counts. He pointed out that although the convictions were based on single identifying witnesses, the identification in both counts was such as to rule out the possibility of mistaken identity. He pointed out that in count one, PW2's evidence of identification was more than recognition of a person known for the first time. In this case he pointed out that PW2 knew the appellant before. He was a school mate. She knew his grand father, she also informed her mother the day after the incident of the house where the appellant lived. Counsel also outlined the circumstances in which both robberies were committed. In relation to count two, he pointed out that the appellant was recognised by PW3 hardly 24 hours after the incident in the street wearing the same clothes he was seen with during the robbery and upon seeing him the appellant run away.

We have considered the evidence on record, the judgment of the trial court and the submissions by both learned counsel. The only issue in this case is one of identification. The court accepted the evidence of PW2 of knowing the appellant for four years and knowing the appellant's grand father. The court accepted that the appellant was apprehended while running away when he saw PW3 in company of the police. The appellant totally denied both counts. We are satisfied that on the facts of this case, the findings of the learned trial judge can not be disturbed. The appeal against conviction is dismissed.

The appellant was sentenced to 15 years imprisonment with hard labour on each count; the sentences were ordered to run concurrently. This court has said before, and we repeat, that 15 years is the mandatory minimum sentence for a single count of aggravated robbery. This means, where an accused is convicted of two counts, a distinction has to be made in sentencing between an accused who commits one robbery and one who commits two robberies. In this instant appeal the two counts of aggravated robbery were committed by a gang who terrorised the complainants in the night. There must be a distiction for this. For this reason we propose to set aside the sentence of 15 years on each count. We substitute for that sentence a sentence of 20 years imprisonment with hard labour on each count to run concurrently. The appeal against sentence is also dismissed.

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E. L. Sakala,
SUPREME COURT JUDGE.

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D.K. Chirwa,
SUPREME COURT JUDGE.

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L. P. Chibesakunda,
SUPREME COURT JUDGE.