

IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT NDOLA

APPEAL NO. 23 OF 2002

(Criminal Jurisdiction)

B E T W E E N:

**MOSES PAULINU NYAVIYU**

APPELLANT

AND

**THE PEOPLE**

RESPONDENT

CORAM: Ngulube, CJ, Sakala and Chitengi, JJS.

4<sup>th</sup> June, 2002

For the appellant - Mr. B.M. Singini, of Phoenix and Partners

For the respondent - Mr. L.E. Eyaa, Senior State Advocate

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**J U D G M E N T**

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Sakala, JS, delivered the Judgment of the Court.

The appellant, who was tried together with two other accused persons, was convicted for the offence of aggravated robbery contrary to Section 294(1) of the Penal Code CAP. 87 of the Laws of Zambia. He was

sentenced to suffer the mandatory minimum sentence of 15 years imprisonment with hard labour.

The particulars of the offence alleged that, the appellant and the two others, on 17<sup>th</sup> of December, 1998, at Lusaka in Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together and whilst armed with an AK.47 rifle, did rob Stanley Kunjeku of a motor vehicle and several other personal effects.

The prosecution evidence conclusively established that PW5, Stanley Kunjeku, was on 17<sup>th</sup> of December, 1998, violently robbed of his motor vehicle, a Toyota corolla, registration number 699-883R. It was also the prosecution's evidence that this vehicle was recovered by the police on 9<sup>th</sup> January, 1999, from the house of PW1, the appellant's tenant. The evidence connecting the appellant to the offence was that, on 6<sup>th</sup> January, 1999, he took this vehicle to PW1. According to PW1, the appellant took it to him for repair of a broken switch, claiming that the vehicle was his. Two days later, again the appellant went to the house of PW1 in company of PW2 and three customers who wanted to view the vehicle and buy it. On the same day the appellant was arrested.

In his defence, the appellant totally denied any knowledge of the events of 17<sup>th</sup> December, 1998, claiming that he spent the whole day at his house. He, however, testified being with PW2 on the 8<sup>th</sup> January, 1999. In cross-examination, he testified that his daughter brought the vehicle to him and he subsequently took it to PW1's garage for repairs. He also testified of taking three people to PW1's garage.

The learned trial Judge considered the prosecution as well as the defence evidence. The learned trial Judge accepted the evidence of PW1 that the appellant posed to him as the owner of the motor vehicle; that the appellant solicited for customers to buy the vehicle. The Court found that there was abundant evidence connecting the appellant to the stolen motor vehicle. The trial Judge rejected the appellant's conflicting explanations. On the basis of the doctrine of recent possession, the Court found the appellant guilty as charged and sentenced him accordingly.

On behalf of the appellant, Mr. Singini filed written heads of argument, based on two grounds of appeal. The first ground of appeal was that the learned trial Judge misdirected himself on the commission of the offence and in applying the doctrine of recent possession. The second ground which was not argued, was that, the learned trial Judge erred and

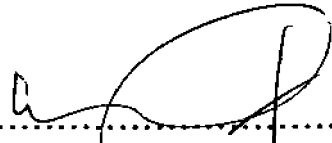
misdirected himself in relying on the evidence of PW1 as corroboration to the testimony of the other four prosecution witnesses. In arguing the first ground, the only ground that was argued before us, Mr. Singini contended that stolen vehicles change hands very quickly. And in the present case, the learned trial Judge misdirected himself by accepting that three weeks fell within the doctrine of recent possession. Counsel also submitted that the learned trial Judge misdirected himself by failing to consider the explanation that the vehicle came in possession of the appellant through his daughter. It was Counsel's further contention that the inference of guilty was wrongly made as it was not the only inference to be drawn from the proven facts. Mr. Singini suggested that other lesser charges on the facts proved were available and that the explanations given by the appellant were reasonable particularly that there was no direct evidence connecting the appellant to the robbery.

On behalf of the State, Mr. Eyaa supported the conviction. He submitted that the learned trial Judge did not misdirect himself in refusing to accept the explanations of the appellant. Mr. Eyaa pointed out that, the appellant's behaviour portrayed that he was the owner of the vehicle. He approached PW1 with the request to repair the vehicle which had a damaged

switch; claiming that he had lost the keys of the vehicle. He pointed out also the fact that the appellant went to the house of PW2 to look for money to buy the switch to repair this vehicle. Mr. Eyaa further pointed out that, it was the appellant who looked for the buyers of this vehicle and it was while he was looking for these buyers that he was arrested. It was Mr. Eyaa's submission that all these suggest that the appellant was the owner of the vehicle and that the learned trial Judge correctly refused to accept the appellant's explanation. Mr. Eyaa finally submitted that in these circumstances the doctrine of recent possession was properly applied.

We have examined the evidence on record and the judgment of the learned trial Judge. The learned trial Judge accepted the evidence of PW1 and PW2 and rejected the several explanations by the appellant. On the evidence on record, we are satisfied that the prosecution established that the appellant had posed as the owner of the vehicle. The doctrine of recent possession was in our view properly applied. On the evidence accepted by the learned trial Judge, the only reasonable inference was that the appellant was one of the robbers. This appeal is therefore dismissed. No appeal lies

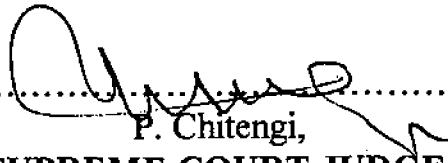
against the minimum mandatory sentence of fifteen years imprisonment  
with hard labour.



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**M.M.S.W. Ngulube,  
CHIEF JUSTICE.**



.....  
**E.L. Sakala,  
SUPREME COURT JUDGE.**



.....  
**P. Chitengi,  
SUPREME COURT JUDGE.**