IN THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: WAMBUZI, C.J., ODER, J.S.C. AND PLATT, J.S.C)

CRIMINAL APPEAL NO. 20/93

BETWEEN

SULA KASIIRA ===================================== APPELLANT

AND

UGANDA == RESPONDENT

(Appeal against conviction and sentence of the High Court at Jinja (Kato, J.) dated 15th June, 1993)

REASONS FOR ORDERS:

The Appellant and another person, Adam Kaigo, were jointly indicted for aggravated robbery, contrary to Sections 272 and 273(2) of the Penal Code. It was alleged that on 10th August, 1991 at Wairaka village, near Jinja, they robbed Joginder Patel (P.W.4) and Hasmukilal Dahyabhai Patel (P.W.5) of Shs.4 million, 40 rolls of textile materials, video cassettes, using a pistol during the robbery. The Appellant and his co-accused were Constables in the Uganda Police Force.

Adam Kaigo having died before the commencement of their trial, the Appellant was tried alone on the indictment, and convicted of simple robbery, contrary to Sections 272 and 273(l)(b) of the Penal Code. He was sentenced to ten years imprisonment and *six* strokes of the cane. It was also ordered that he should be subject to police supervision for four years after the expiration of the sentence of imprisonment, and pay a total of Shs.6,880,000/= to Joginder (P.W.4) as compensation for the money and articles of property stolen from him in the robbery. The learned trial Judge had found on page 45 of his judgment that Joginder (P.W.4) alone had been the proprietor of the stolen cash and property, it and that Hasmukilal (P.W.5) had been wrongly included in the indictment as a complainant.

The prosecution evidence as accepted by the learned trial Judge was that Joginder (P.W.4) was a businessman trading in textiles in Jinja. Hasmuklal (P.W.5) worked with him as a

partner. Both witnesses said so in their evidence. The two businessmen lived in Iganga town, and commuted to Jinja every day for their business. On 10th August, 1991 at about 6.30 a.m. they left Iganga for Jinja in a pick-up, registration number UPA 802, which belonged to Joginder, and in which were loaded Shs. 4,000,000/= cash, six video cassettes and some rolls of textiles materials. The money was packed in three bags, two of which were blue in colour and one maroon. The pick-up was driven by an employed driver called Baraka. Joginder (P.W.4) and Hasmuklal (P.W.5) sat in the front cabin of the pick-up, the latter sitting next to the driver.

When the vehicle reached Wairaka near Jinja, it was stopped by two men dressed in police uniform, one of them wearing a white traffic police armlet, who was alleged to be the Appellant. He was the one who stopped the vehicle by raising his arm. The pick-up having stopped the man with white armlet asked the driver to get out and produce his driving permit, which he did. The driver then walked with the man in the white armlet behind the vehicle, the latter talking to him. The other man, alleged also to be the deceased, Kaigo also in police uniform, approached the passenger side of the pick-up front cabin, produced a pistol and ordered out Joginder (P.W.4) and Hasmuklal (P.W.5), pressing a pistol of the abdomen on the latter. The two passengers got out of the vehicle and, on the orders of their assailants, stood behind the pickup facing away from it. The two men in police uniform jumped into the front cabin of the vehicle and, having been joined by a third man in plain clothes, drove off towards Iganga. Joginder (P.W.4) said that as the pick-up drove *away,* the man who hi1 the pistol fired it from inside the cabin. This evidence was, however, rejected by the learned trial Judge because Hasmklal (P.W.5) was silent in his testimony about a gun having been fired. The rejection formed the basis on which the Appellant was convicted for simple robbery, instead of aggravated robbery.

All the cash and articles of property that were in the pick-up were driven away in it, leaving Joginder (P.W.4) and Hasmuklal (P.W.5) stranded helplessly by the road-side for sometime. Later, they boarded a vehicle and reached Iganga at about 8.00 a.m., where they reported the incident at the Police Station.

At about 9.00 a.m. the same morning the pick-up was recovered in a village near Iganga, where it had been abandoned, cleaned of all its contents. The vehicle was not produced in evidence because the owner had sold it before the case came for trial.
Evidence from Joginder (P.W.4), Yusufu Nambale (P.W.2), a brother of the Appellant's Co-accused and John Ngunire (P.W.3), the R.C.I Chairman of area in which Yusufu Nambale. (P.W.3) and Adam Kaigo lived, appears to indicate that the Complainant's three rolls of the stolen textile materials, some of the money and two or three of the bags in which the money had been packed were recovered. But only the three rolls of textiles and one blue bag were produced in evidence as exhibits P.2 and P.3 respectively. The money was not. We shall say more about this later.

Subsequently the Appellant was arrested in connection with this offence. At an identification parade, conducted by D/I.P. Martin Othieno (P.W.I), the Appellant and his Co-accused were identified by Joginder (P.W.4) and Hasmuklal (P.W.5) as having been among the men who robbed them on the occasion in question.

The prosecution also attempted to adduce some evidence concerning an alleged confession to the robbery made by the Appellant to a Police Officer. The defence objected to the admission of the alleged confession. In a ruling following a trial within a trial, the learned trial Judge upheld the defence objection, on the grounds that the Appellant had been assaulted before signing the alleged confession and that the same had not been voluntarily made. Consequently the alleged confession was not admitted in evidence.

In a sworn testimony in his defence, the Appellant denied the prosecution evidence against him, putting up an alibi. He testified that before his arrest, he was a police Constable attached to the Mobile Patrol Unit based at Naguru. As such, he worked as a guard at the Egyptian Embassy from 5.8.1991 to 11.8.1991. On 9.8.1991, he reported at the Embassy on duty at 7.00 p.m., reported off duty at 6.30 a.m. the following morning, and returned to his quarters at Naguru Police Barracks, where he stayed the whole day. He was arrested at the Barracks on 16.8.1991, and was transferred to Jinja Central Police Station, where he was tortured during an interrogation. The Appellant claimed that his hands were tied behind him, his

fingers were pricked with pins and his hand was cut with a razor blade.

Concerning the identification parade, the Appellant testified in detail to the effect that it was not properly conducted. The details and manner of his complaint would appear to reflect his knowledge as a Police Officer of how identification parades should be conducted. He said that when the identification parade was held, he was not feeling well due to wounds, which had been inflicted on his arms and feet. Moreover, the C.I.D. Officer conducting the parade told him to sign some forms. He signed them, without reading what they were about. This would appear to be incredible given that the Appellant was a Police Officer, not just an illiterate ordinary person. Moreover, the relevant form produced in evidence (exhibit P.1) did not bear his signature.

The Appellant further claimed that though he and Adam Kaigo were dressed in police uniforms like the other 15 or 20 participants in the parade, his own uniform was torn, full of holes and had white armlets. He appeared in bare-feet, not having been given shoes. Another reason he gave for not wearing shoes was that he had wounds inflicted on him by the police. ‘The Appellant further claimed that the other 15 or 20 participants in the identification parade were in new and smart police uniforms and shoes, and that his position in the line was second from the end. With regard to his position in the line, the Appellant did not say whether he had preferred any particular position or asked to change his position or that his request had been refused by the police Officer concerned. However, the identification parade form , Exh. P.1, indicated that he changed his position before Hasmuklal was called to the parade.

Regarding how he was identified at the parade, the Appellant said that an Indian who was unknown to him before was brought to the parade and informed by the Police to look at the parade and pick the men who had robbed him. The Indian at first failed to do so, and was told to try again. He picked the Appellant and Adam Kaigo on the second attempt. Another Indian was brought for the same purpose. The second Indian picked the Appellant and Adam Kaigo on the first attempt. The Appellant further said that he had seen the second Indian prior to the parade, when he (the Appellant) had been taken to an office to sign forms before the commencement of the identification parade exercise. After the parade was over, he informed the C.I.D. Officer concerned that he (the Appellant) and Adam Kaigo had been dressed in

uniforms that were different from those worn by the other participants in the identification parade.

Commenting on the evidence of D/I.P. Othieno (P.W.I) that he (the Appellant) had been satisfied with the manner in which the identification parade had been conducted, the Appellant said that it was a lie.

The learned trial Judge rejected the Appellant's complaint that the identification parade had been conducted in an unsatisfactory manner and held that it was, in fact, properly conducted in accordance with the procedure laid down in ***Rex v. Mwango s/o Manaa*** (1936) 3 E.A.C.A. 29, and ***Ssentale v. Uganda*** (1968) E.A. 365. The learned trial Judge also rejected the Appellant's defence of alibi and held that the evidence of identification from the prosecution had properly put the Appellant at the scene of the crime, thus destroying his alibi. The Appellant was accordingly convicted of simple robbery. Hence this appeal.

As originally set out in the memorandum, the grounds of appeal were against conviction only. There was no appeal against sentence. However, at the commencement of his submissions before us, Mr. Walter Okidi Ladwar, learned Counsel for the Appellant, made an application for leave to appeal against the sentence under Section 131(2) of the Trial on Indictment Decree, which we granted. The memorandum of appeal was then amended accordingly.

Five grounds of appeal against the conviction were set out as follows:

1. The learned trial Judge erred in law and fact when he failed to evaluate properly the evidence of identification thereby making the wrong inference that the Appellant was properly identified.

2. The learned trial Judge erred in law and fact when he failed to properly evaluate the evidence generally by:

(a) reaching a decision of fact before evaluating the evidence properly;

(b) failing to consider the evidence adduced in the trial within a trial;

(c) making assumptions and inferences not supported by evidence thereby rejecting the defence of the Appellant.

4. The learned trial Judge erred in law and misdirected himself in his decision about what constitutes the ingredients of theft.

5. The learned trial Judge erred in law and misdirected himself during the summing up to the Assessors as his summing up amounted to a judgment.

In the course of his submissions Mr. Ladwar abandoned grounds two and five of the appeal. After hearing him, we also saw no merit in the remaining grounds, and dismissed the appeal against conviction, reserving our reasons for doing so, which we now proceed to give.

In essence the submissions of the learned Counsel on grounds one and three attacked the learned Judge's acceptance of the prosecution evidence of identification and rejection of the Appellant's criticism of the manner in which the identification parade was held. He said that the evidence of identification was not sufficient to support the conviction. Some of the reasons for such a contention were that the two identifying witnesses, Joginder (P.W.4) and Hasmuklal (P.W.5) did not know the Appellant before, nor did they have sufficient time and opportunity to see Appellant face to face at the scene; medical evidence supported the Appellant's testimony that he had sustained injuries as a result of torture and so was unable to wear shoes at the identification parade; the Appellant had been seen by the witnesses at the police station before the identification parade was held; contrary to the evidence of D/I.P.

Martin Othieno (P.W.I) that the Appellant and all the other participants in the identification parade wore ordinary police uniforms, the Appellant, his Co-accused and two others had white armlets; the police told Joginder (P.W.4) and Hasmuklal (P.W.5) that they should pick from the parade those who had robbed them; and that the Appellant did not sign the identification parade form.

With respect, we were unable to accept the learned Counsel's contentions for a number of reasons. To begin with, both the identifying witnesses, Joginder (P.W.4) and Hasmuklal (P.W.5) had ample time and opportunity to observe their Assailants at the scene, so as to enable them to recognise the Appellant and Kaigo on the identification parade. The incident happened between 7.15 a.m. and 7.30 a.m. when, according to Joginder (P.W.4), it was not dark and he was able to see the faces of their attackers. Joginder also said that after stopping the vehicle, the Appellant stood near the driver's door asking the latter to produce his driving permit, and that he (Joginder) picked the Appellant because he recognised the Appellant notwithstanding the fact that the Appellant had been a stranger to the witnesses at the time of the incident, in cross-examination he said that he saw the Appellant face to face for about one minute when he was telling the driver to produce his permit. In re-examination, he said that the incident of robbery took about three to five minutes.

Hasmuklal (P.W.5) said that the incident lasted five to fifteen minutes, and that he saw the Appellant at the scene three times: When he stopped the vehicle, when he was going behind the vehicle, and when the vehicle was being driven away.

In our opinion the evidence of these two witnesses, which we think the learned trial Judge rightly accepted, clearly indicated that they had the necessity to see the faces of their attackers in day light and had sufficient time and opportunity in which to do so. When they subsequently identified the Appellant and Adam Kaigo at the parade, there can be no doubt that they did so correctly.

With regard to the Appellant's complaint that he had been (a) without shoes due to wounds, and (b) in a uniform that was in worse condition than those of the volunteers participants at the identification parade, there was, firstly, the evidence of the Appellant's medical

examinations. He was initially examined on 23/8/1991, the medical treatment notes of which, exhibit D.I, indicate that he had wounds on the elbows, on both thighs and on the right foot. The second examination was by a medical Officer at Jinja Hospital on 3/9/1991. The relevant medical report, also admitted in evidence, indicates that the Appellant had three laceration wounds on the buttocks, on the left and the right feet, measuring 3 x5 c.m, 1 x 1 c.m. and lx1 c.m respectively. The report does not indicate how old the wounds were at the time the Appellant was medically examined.

The identification parade was held on August, 1991, about three days prior to the Appellant's first medical examination. In the circumstances, the fact that the Appellant was found to have some injuries three days later did not necessarily mean that he had them by the date he attended the identification parade.

Secondly, there is the evidence of Joginder (P.W.4), Hasmuklal (P.W.5) and D/I.P. Othieno (P.W.I) on the condition in which the Appellant was and that of his uniform at the parade. Joginder (P.W.4) testified that the Appellant appeared to be healthy and wore shoes and uniforms as did the other participants, except that the Appellant's uniform was that of the traffic police. This in effect meant, that the only difference was that the Appellant's uniforms had gimlets. Hasmuklal (P.W.5) testified that at that parade, the Appellant was smiling, looked well, was not dirty or weak, had no wounds on him and was in ordinary police uniform. The witness further said that some of the identification parade participants were in traffic police uniforms and others were in ordinary police uniforms. He had not looked at the Appellant's feet and so he was unable to say what kind of shoes he was wearing.

It appears that the question of whether the Appellant had or had not been in shoes at the parade was not put to D/I.P. Othieno, P.W.I who had conducted the parade. But his evidence that the Appellant was in uniform just as the other parade participants would seem to suggest that the Appellant was not barefooted, since uniforms normally include shoes.

The evidence of the D/I.P. also included what he instructed the identifying witnesses to do at the parade. He told them that suspects might or might not be in the line. The two witnesses

then each picked the Appellant and Adam Kaigo individually as having been among their robbers on the fateful day. In this connection, Joginder (P.W.4) said that the police simply told him to go and pick the people who had robbed him from among the 30 people who were dressed in police uniform. He picked the Appellant because he (Joginder) recognised his face very well as the person who had stopped the vehicle and demanded the driving permit from the driver. Hasmuklal (P.W.5) said that he was sitting in a room, then the police Officer went to him and said:
"come and select these people".

The relevant regulation as stated in ***Rex v. Mwango*** (supra) and ***Ssentale v. Uganda*** (supra), provides as follows;

> ***"12. In Introducing the witness tell him that he will see group of people who may or may not contain the suspected person. Don't say, "Pick out some body" or influence him in any way whatever".***

According to the evidence, therefore, there would appear to be some differences between the words, which the D/I.P. Othieno said he used when introducing the two witnesses to tell them what to do and what the two witnesses said they were told. We do not think that much importance should be attached to the differences, because the two witnesses were laymen, unfamiliar with the words, which the D/I.P said he used, or was expected to use. The important thing is that they should not have been influenced in any way to wrongly pick the Appellant from the parade. We are satisfied that they were not, because the two witnesses explained clearly in their evidence why they had picked the Appellant, which evidence we consider to have been rightly accepted by the learned trial Judge.

Next, there is the complaint that the Appellant was picked by the second Indian (Hasmuklal, P.W.5) because the witness, had seen him just before the parade had commenced. In this connection, Hasmuklal (P.W.5) testified that when he was in a room at Jinja Central police Station, apparently waiting to be called to identify the suspects, he did not face the cell where the Appellant was. He did not, infact, know where the cell was. D/I.P. Othieno (P.W.I) denied in cross examination that the witnesses had seen the Appellant in the Office of the O.C.,

C.I.D. before the parade was held. The trial court accepted this evidence. We, therefore, think that the Appellant's complaint in this regard had no basis and that Hasmuklal (P.W.5) did not see the Appellant before the parade was held.

Police Form 69, used at the parade (Exh. P.1), *was* filled by D/1.P. Othieno (P.W.1). To the question whether the suspects made any objection to the arrangements, the answer recorded reads as follows

> ***"One of the suspects, P.O., Kasiira claimed that the witnesses were able to identify him because he was made to line up among the people who were also dressed in police uniform*** ".

If that information was correct, it indicated that the Appellant did not complain to the Police Officer concerned of the host of irregularities, which he later raised in his evidence. Moreover, as the learned trial Judge said, since the Appellant himself was a Policeman, there was nothing wrong in having him line up in uniform with other policemen, also in uniform, for purpose of the identification parade.

Another Section of the form (Exhibit P1) required a reply or any statement to be recorded from the suspect regarding whether he was satisfied that the parade had been conducted in a satisfactory manner. The following was recorded as the reply or statement from the Appellant and Kaigo to that Section:

> ***"Both suspects satisfied with the manner in which the parade was conducted, except P.C. Kasiira complained that he was identified by the witnesses simply because he was made to dress in police uniform. Kaigo did not make any comments".***

The same Section required that the suspect's signature should be appended to the reply or statement, apparently to authenticate it. In the instant case the Appellant's signature was,

apparently not taken, a complaint which he made in his testimony. Instruction No.11 in ***Rex v. Mwango s/o Manaa*** (supra) and ***Ssentale v. Uganda*** (supra) provided as follows:

> ***"At the termination of the parade or during the parade ask the accused if he is satisfied that the parade is being conducted in a fair manner and make a note of his reply".***

There is no requirement, according to these decided cases, that the suspect or the Accused should sign his reply or statement in this connection. All that the police Officer concerned is required to is to ask for a reply or statement from the suspect or the Accused, and record it if one is made. Accordingly it is clear that the absence of the Appellant's signature to the relevant reply or statement, or the failure (if that was the case) of the Police Officer to ask the Appellant to append his signature was not an irregularity in the instant case.
However, since police form 69 requires the Police Officer concerned to invite the suspect or Accused to sign such a reply or statement, we strongly advise that Police Officers conducting identification parades should always endeavour to do so. In case the suspect or Accused refuses to sign chat fact should be noted down.

In the circumstances, we were satisfied that the identification parade in this case was properly conducted and that the learned trial Judge was justified in so finding.

For these reasons, we were satisfied that the Appellant was properly identified at the scene of crime and at the identification parade as being one of the men who robbed the Complaint on the fateful day. The evidence of identification from Joginder (P.W.4) and Hasmuklal (P.W.5) ruled out any possibility of mistake or error on their part as to the identity of the Appellant as one of the robbers.

Accordingly, we held that grounds one and three of the appeal must fail.
On ground four of the appeal, the learned Counsel for the Appellant, Mr. Ladwar, submitted that it was not proved that the money had been stolen. With respect, we considered this ground of appeal and the learned Counsel's contention to be completely devoid of any merit,

and we decided that it, too, should fail.

For a restatement of the law on taking or carrying away as an element of theft, the learned trial Judge referred to paragraph 1484 in Vol. 10 of Halsbury's Laws of England, 3rd Edition, which reads as follows:

> ***"1484 Asportation. There must be what amounts in law to an asportation (that is carrying away) of the goods of the prosecutor without his consent; but for this purpose, provided there is some severance, the least removal of the goods from the place where they were is sufficient, although they are not entirely carried off The removal, however short the distance may be, from one position to another upon the owner's premises is sufficient aspiration, and so is a removal or partial removal from one part of the owner's person to another. There must, however, be a complete detachment of the goods if attached. In cases where aspiration cannot be proved, but where the prisoner intended to steal and did some act in furtherance of that object, he may be convicted of attempting to steal. The offence of larceny is complete when the goods have been taken with a felonious intention, although the prisoner may have returned them and his possession continued for an Instant only*** ".

The law as restated there, represents the legal position in Uganda regarding the act of taking or carrying away as an element of the crime of theft. Clearly that was what the learned trial Judge had in mind when he made the finding that the Complainant's cash of Shs.4,000,000/=, some rolls of textile material, video cassettes and the pick-up in which the money and the other items were loaded had been stolen.

The evidence of Joginder (P.W.4) and Hasmaklal (P.W.5) clearly indicated that the cash had been loaded in the pick-up when they started on the journey from Iganga. Joginder, the owner, said that the money consisted of Shs.100/ and Shs.50/ notes and was packed in a blue and black big. Hasmuklal (P.W.5) did not see the cash but was informed by the owner that it was Shs.4,000,000/. When they were attacked, the pick-up was driven away with all its contents, including the money. When it was later recovered the same day, the pick-up had

been cleaned of all its contents. According to Yusufu Nambale (P.W.2) and John Ngumire some money was recovered by the police in Iganga on 10/8/1991 which, apparently, was Joginder's stolen money or part of it. John Ngumire (P.W.3) said that the police gave him a bundle of Shs.5,000/= in Shs. *51*= notes, out of a bag. Joginder subsequently saw the two bags in which he had packed the money at Iganga Police Station, but only one of the bags was produced in evidence; nor all the cash of Shs. 4,000,000/= was recovered by the owner, Joginder (P.W.4). He said in his testimony that it seemed the police recovered the money and took it.

Applying the law to these facts, there would be no doubt that Joginder's money, Shs.4,000,000/ in cash was stolen from him. The evidence to which we have referred, in our opinion, proved the theft of the money beyond reasonable doubt. The probability that the money was subsequently recovered and kept by the Police did not detract from that fact.

For these reasons, we dismissed the appeal against conviction.

The ground of appeal against sentence was that the sentence was harsh and manifestly excessive.

The Appellant was convicted of simple robbery, contrary to sections 272 & 273(1) (b) of the Penal Code the maximum sentence for which was life imprisonment At the time of his arrest for the offence. he was a Police Constable in the Uganda Police Force, which he had joined in 1986. When he was convicted and sentenced on 15/6/1993, he was 28 years old, and had been in custody since his arrest for one year and ten months. All these the learned trial Judge took into account when sentencing the Appellant, and said this:

> *"All these matters attract some degree of leniency in favour of the accused. On the other hand,' this Court is concerned about the increase in commission of this kind of crime in the Country these days. The amount of property involved was much, and the Complainant only managed to recover 3 rolls of the textiles. The maximum sentence for this offence is life imprisonment. I agree with the learned Counsel for State when*

he says that the Accused was a man of disciplined force, he ought to have set good example to others. I feel a sentence of 10 years will serve the ends of justice. Accused is sentenced to 10 (ten) years imprisonment with six strokes of the cane. He is also to remain under police supervision for 4(four) years after the expiration of his imprisonment sentence. The Accused is to compensate the Complainant Joginder Patel of Shs. 6,880, 000/ broken down as follows:

(a) *4,000,000/= cash taken*

(b) *60,000/= for 6 video cassettes.*

(c) *2,820,000/= for 47 rolls of Jiwa material unrecovered (although the indictment speaks of 40 rolls but in Court the Complainant when on oath said the rolls were 50 and only three were recovered and produced -in Court)*

In sentencing the Appellant to ten years Imprisonment, the learned trial Judge appears to have taken into account all the factors that counted in his favour. But the Appellant was a Police Officer who should have been a guardian of law and order and a protector of other people's property. He instead did the opposite of what was expected of him. We think that the learned trial Judge rightly took this into account.

Another factor which we take into consideration regarding the sentence is that this was a case in which the Appellant could have been convicted of the more serious offence of aggravated robbery, which carries the death penalty. Evidence from one of the prosecution witnesses indicated that a gun was fired immediately after the robbery. The learned trial Judge rejected that evidence on grounds that cannot, with respect, be considered to be very sound. The Appellant, therefore, could be said to have been lucky to have been convicted of the lesser offence of simple robbery.

In the circumstances we are unable to say that the learned trial Judge exercised his discretion wrongly and that the sentences of ten years imprisonment and six strokes of the cane were harsh and manifestly excessive.

Section 2744 of the Penal Code, which provides for corporal punishment for the offence for which the Appellant was convicted, sets neither the minimum nor the maximum of corporal punishment that a Court may impose. This is left entirely to the discretion of the Court. We are unable to say in this case that the learned trial Judge exercised his discretion wrongly in imposing a sentence of six strokes of the cane.

Compensation to any person to the prejudice of whom a robbery has been committed is provided for under Section 273(3) of the Penal Code. In the instant case, the Appellant was liable to compensate the Complainant, Joginder (P.W.4) for his stolen money in cash, rolls of textile materials and video cassettes which he never recovered.

In the case of the textile material the indictment stated that 40 rolls, valued at Shs. 3/= million, had been stolen. This gave a value of Shs.75,000/= to each roll of textiles. But in his evidence, Joginder (P.W.4) said that about 50 rolls were in the pick-up. On the other hand, Hasmuklal (P.W5), who loaded the stuff on the pick-up, said that there were about twenty rolls. In spite of all this, the indictment was not amended. In the circumstances, we would be inclined to accept Hasmuklal's evidence that there were 20 rolls on the pick-up, not 40 or 50. In that case, the Complainant would be entitled to compensation for 17 rolls of textile materials that he did not recover, valued at Shs. 1,275,000/=.

With regard to compensation for the cash and video cassette stolen from the Complainant, we agree with the orders of the learned trial Judge.

Under Section 123 of the Trial on Indictment Decree, 1971, an order for Police supervision for a period of not exceeding five years is mandatory against any person convicted of robbery under Section 272 of the Penal Code and sentenced to a term of imprisonment less than life.

In the instant case, an order for police supervision for four years after the completion of the sentence of imprisonment of ten years was made against the Appellant. We think that the order was proper in the circumstances of this case.

In the circumstances, we think that the appeal against sentence should succeed only in respect of the Order for compensation for rolls of the textile materials stolen from the Complainant.

In the result the appeal against the sentences of ten years imprisonment and six strokes of the cane, and against the Orders for compensation in respect of the cash and video cassettes stolen from the Complainant is dismissed.

The order of the learned trial Judge with regard to compensation is, therefore, set aside and substituted with the following Order:-

The Appellant should pay Shs. 5,335,000/= to the Complainant, Joginder (P.W.4) as compensation for the money, textiles materials and video cassettes which the Complainant lost as a result of the robbery.

Before leaving this appeal we wish to comment on three aspects of the case, which we think were highly irregular with regard to its investigation and prosecution. First, the Police Officer who investigated the case did not give evidence although he should have done so, in view of the fact that his evidence was important as throwing some light, to assist the trial Court, on certain areas of the case. D/I.P. Othieno. (P.W.I) named the Investigating Officer as Mr. Kaunda. U/A.I.P. Abuneri Kibwota Oneka (P.W.6) said that Mr. Kaunda was the O.C., C.I.D.

He must, therefore, have been a fairly Senior Officer. No explanation was given to the trial Court either by the learned State Attorney who prosecuted the case, or by the Police Officers who gave evidence as to why the Investigating Officer did not give evidence or was not called as a witness.

Secondly, the evidence indicates that some, if not all, of the sum of Shs. 4,000,000/= which had been stolen from the Complainant, Joginder (P.W.4) was recovered by the Police, but it was never produced in evidence No explanation was offered by the prosecution or the police regarding what happened to this money, which seems to have vanished in thin air, and yet the two bags in which the money had been packed by the Complainant re-appeared and were seen by him at Iganga Police Station. One of the bags was subsequently produced in evidence in Court, without any explanation of what had happened to its contents. The Complainant said in his testimony that it seemed the money was recovered and taken by the police, but he never received any of it back.

Thirdly, the three rolls of textiles and the blue bag, which had contained the money, appear to have mysteriously found their way in Court. No evidence was led by the prosecution regarding how and from where the items wore recovered and how they came to be produced as exhibits in Court. All these are matters on which we think evidence from the Investigating Officer would have been useful to throw important light, but as it is they were left in darkness.

In the circumstances we direct that a copy of this judgment be forwarded to the Attorney General for appropriate action.

Dated at Mengo this 17th day of October 1994.

S.W.W. WAMBUZI
CHIEF JUSTICE

A.H.O. ODER
JUSTICE OF THE SUPREME COURT

H.G. PLATT
JUSTICE OF THE SUPREME COURT.

I CERTIFY THAT THIS IS

A TRUE THE ORIGINAL

W.MASALU MUSENE