

MARTIN CHIVIRU
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE AND BHUNU JJ
HARARE, 14 January, 2004 and 25 February, 2004

Criminal Appeal

Mr Manyurureni for appellant
R K Tokwe, for respondent

HUNGWE J: The appellant was arraigned before a magistrate on a charge of extortion and alternatively a charge of contravening s 3(1)(a) arw 3(2) of the Prevention of Corruption Act Cap 9:16. At the close of the prosecution case and upon application by the defence, the appellant was acquitted on the charge of extortion but was placed on his defence on the alternative charge of contravening the Prevention of Corruption Act.

The facts alleged against the appellant are as follows. On 11 October 2001 one Evans Chiroodza (Evans) was taking a truck load of gold ore to a mill somewhere in Bindura. At or on a road, Hay Road he was stopped by the appellant. The appellant was driving a police motor vehicle commonly referred to as a "B" car. When Evans stopped the appellant threatened him with arrest unless he paid him the sum of \$3 000. Evans together with appellant went to one Cecil Guruve (Cecil) and asked for the money to pay the appellant. Cecil gave him the money and the appellant was paid and left. The matter was later reported to the police by somebody not identified to the court. Investigations followed and the appellant was arrested. Evans and Cecil gave evidence for the prosecution case.

The appellant's defence was a complete denial of the offence charged. He denied

that he met the two witnesses or that he knew them. He said that the charges were fabricated by the witnesses connivance with officers at the appellant's station who were out to weed him out as he was effective against gold traffickers.

It is important to analyse the evidence led for the State in some detail. Evans said that when he was stopped by the appellant he had told the appellant that he was prepared to pay the sum of \$3 000 to avoid arrest but that they had to go to Cecil's house in Chipadze which was some distance away. Indeed they proceeded to Cecil's house and Cecil gave him the money. There was a discrepancy in the evidence of Evans and Cecil on which the defence sought to attach some importance. In their evidence Evans said that the gold ore belonged to Cecil and Cecil said it belonged to Evans. Evans said that when the \$3 000 was made available it was Cecil who handed over the money to the appellant yet Cecil said he gave the money to Evans and that it was Evans who handed over the money to the appellant. Evans said that he was advised by Cecil of the appellant's house where as Cecil said that he was informed by Evans about the appellant's name. These are the major contradictions in the evidence of Evans and Cecil.

It seems to me that both Cecil and Evans did not admit ownership of the gold ore or handing over the money because the possession of the ore must have been illegal and the payment of \$3 000 to escape arrest was obviously illegal. None of them would have wanted to implicate himself in the commission of any of these crimes. There evidence was identical on the fact of the money having been given to the applicant.

The appellant's defence also requires closer analysis. He said the charges were fabricated. He did not know the two State witnesses. He was a very active member of

the force and had arrested many gold traffickers. Because of his effectiveness he believed that other members of the force disliked him and that they colluded with the witnesses to nail him. His evidence was weakened to a fatal extent by his failure to -

- a) explain why his fellow policemen would have wanted him weeded out. He tried to give the impression that his fellow officers did not like an efficient colleague. This can hardly be true unless the force members at Bindura are all corrupt.
- b) To mention any one of the officers who may have acted in collusion with the witnesses to falsely implicate him in the offence.
- c) To show that on the day in question he was not driving the "B" car at the time and place mentioned by the witnesses. In a charge under the Prevention of Corruption Act, the onus was on the appellant to discharge on a balance of probabilities that he did not commit the offence charged.

In his analysis of the evidence the trial magistrate was alive to the fact that he was dealing with possible accomplices' evidence when he considered the evidence of the two State witnesses. His treatment of the evidence cannot be faulted. He correctly rejected the appellant's version.

In the premises the conviction of the appellant cannot be faulted.

As for sentence the appellant made no meaningful submissions against the sentence of 12 months imprisonment of which 2 months were suspended on appropriate conditions. The sentence imposed erred on the side of leniency. A policeman who

solicits for a bribe should expect to be fried in boiling oil, not leniency. Bribery and corruption attacks the root of good administration. They rob society of good governance. Bribery like corruption needs to be nipped in the bud. It is one crime for which a custodial sentence cannot be said to be out of sync with expectations of society.

In all the circumstances the appeal is dismissed in its entirety.

BHUNU J, agrees.

Wabatagore & Company, appellant's legal practitioners
Office of the Attorney-General, for the respondent