

THE STATE
versus
EPIMICUS PHIRI

HIGH COURT OF ZIMBABWE
MAWADZE J
HARARE, 23 February 2015

Criminal Review

MAWADZE J: This matter was referred to me on automatic review. I should confess that my sense of justice was offended by the sentence imposed by the learned Regional Magistrate who dealt with the matter.

The 54 year old accused was convicted after a protracted trial of 5 counts of rape involving the 14 year old complainant who is also accused's step daughter.

The facts proved are that from 10 April to 12 May 2014 at Plot 6 village 1 Greenlands Farm in Beatrice, the accused on five different occasions would forcibly have sexual intercourse with the complainant in the kitchen hut when all other persons were not at the homestead. The matter came to light during the commission of count 5 when the state witness Hilda Majoni who is also a neighbour to the accused and complainant saw accused forcibly dragging complainant into the kitchen hut. Hilda Majoni thought the accused wanted to assault the complainant and rushed to the kitchen hut. The accused was found in *flagrante delicto*. From the evidence of Hilda Majoni she had to pull off the accused from the top of the complainant to cause him to withdraw his penis from the complainant's vagina.

Despite the minor confusion in relation date in count 5, the evidence led points to the accused's guilt. The conviction on all the five counts is in order and is confirmed.

What exercised my mind is the sentence imposed by the learned Regional Magistrate which I find to be manifestly lenient.

All the 5 counts were treated as one for sentence and the accused was sentenced to 16 years of which 4 years imprisonment were suspended for 5 years on the usual conditions of good behaviour leaving an effective term of 12 years imprisonment.

After reading the learned Regional Magistrate's reasons for sentence, I could not appreciate why he decided to exercise such measure of leniency in respect of the accused. The only discernable mitigating factors are that accused is a 54 year old married man with 4 children, two of whom are with complainant's mother aged 4 years and 6 months old respectively. The accused is a first offender, owns a house in Pumula Suburb in Bulawayo and is now involved in farming at Greenlands farm. The other two children born in 1982 and 1984 are majors.

The accused committed a very serious offence of rape. He in fact raped the complainant five times which aggravates his conduct. This happened over a period of a month and could have continued as he threatened complainant after each count, if accused had not been caught in the act in count 5. The accused is a step father to the complainant who should have offered parental love and protection. Instead he turned her into his "wife" forcibly at the tender age of 14 years. The accused was not sexually starved as he is married to complainant's mother. Despite being caught in the act the accused is not contrite at all.

The general public has rightly demanded that rapists should be severely punished. Rape is a crime of violence rather than passion. It dehumanises and traumatizes the victim. It is even worse when the victim is potentially exposed to the lethal infection of the HIV virus and other sexually transmitted infections. The penal provisions in s 65 (1) of the Criminal Code [*Chapter 9:23*] which relates to rape is imprisonment for life or any other shorter period. I believe the legislature has done enough by giving the courts very sharp teeth in dealing with rapists. The courts should, in my view, play their role by punishing such offenders in a manner which acknowledges the serious nature of the offence and the interests of justice. A sentence of 16 years imprisonment is wholly inadequate for a step father who ravished his step daughter on five different occasions.

In my view, an effective term of 20 years to 25 years imprisonment would have been appropriate in respect of all the 5 counts of rape.

I am therefore for that reason unable to certify the proceedings as in accordance with real and substantial justice. I withhold my certificate.

MAWADZE J _____