

Judgment No. S.C. 55/85 Cri Appeal No. 368/84

AMOS SIBANDA v THE STATE

SUPREME COURT OF ZIMBABWE,
DUMBUTSHENA, CJ, BECK, JA & McNALLY, JA, HARARE, JUNE 24, 1985.

I. Gonese, for the appellant

E. Chatikobo, for the respondent

McNALLY, JA: In this matter the appellant was the Headmaster of a Secondary School. He was convicted in the Magistrates Court, Shurugwi of common assault, and was sentenced to a fine of \$40 or, in default of payment, 20 days' imprisonment with labour. He appeals against conviction only.

The complainant was a woman teacher in the Primary School which was apparently attached to the Secondary School, so that they were all in the same premises. Her allegation was that she was summoned to the appellant's house one evening; that there was an argument there between them outside the house during the course of which she accused him of behaving in an oppressive manner; and that he thereupon struck her two or three blows about the face which reduced her to tears. She says that she then went and reported this matter to her Primary School Headmaster and later to the education authorities in Gweru and to the police as well as to her parents.

The argument put forward by Mr Gonese, who appeared for the appellant, was that the evidence was consistent with the idea that the complaint was a fabricated one. He suggested that the evidence of the complainant was most unsatisfactory and that therefore she should not be believed.

He suggested that the evidence of the Primary School Headmaster should also be rejected on the grounds that, if one reads between the lines of the evidence, one can see that there is rivalry between him and the appellant, the Headmaster of the Secondary School.

The magistrate found that the complainant gave her evidence well and it is difficult for this Court to go behind a finding on demeanour. Certainly on the record there is nothing to suggest that her evidence was badly given. It is true that there are minor conflicts, in particular one minor conflict in her evidence, and that is in relation to the number of blows that were struck. It is said in the State Outline that two blows were struck and she says in her evidence that three blows were struck. Her evidence, as recorded, is a little confusing in that regard, because she begins by saying that "he gave me two blows" and then she continues "the first two on my lower jaw and the third on my mouth". In so far as there is a conflict there, it seems to me that it is a conflict of no significance whatever.

The fact is that she says that she was struck certain blows, that she bled on to her dress and that she reported the matter immediately to the Primary School Headmaster. The Primary School Headmaster gave evidence which supported her entirely. He said that she came to him that evening weeping, she made a report to him of the assault, he saw the bloodstains and he saw that her face was swollen. I can find no basis for saying that the Primary School Headmaster is lying, It may well be that there is some antipathy between him and the appellant, but there is no basis for suggesting that simply because there is some antipathy the witness is telling lies.

It is common cause that the complainant was summoned to the appellant's house after dark (the time is not material); that there was a dispute between them; that she called him an oppressor; and that shortly thereafter the appellant admits that she had bloodstains on her dress. Given that those facts are common cause, it seems to me entirely far-fetched to suggest that she was not assaulted or that she was assaulted by somebody else. The evidence of the Primary School Headmaster seems to me wholly to bear out what she says and I find myself unable to accept the submission by Mr Gonese that there is any reasonable possibility that the story that she tells is untrue.

In the circumstances I would dismiss the appeal against conviction.

DUMBUTSHENA, CJ: I agree.

BECK, JA: I agree.

Chirunda, Chihambakwe & Partners, appellant's legal representatives

