

MATTHEW MUNYANGI
versus
THE STATE

HIGH COURT OF ZIMBABWE
PHIRI J
HARARE, 27 July 2017

Bail Application

M Ndebele, for the applicant
E Makoto, for the state

PHIRI J: This was an application for bail pending appeal in which this court, after perusing the application and hearing counsel, this court was of the considered view that bail pending appeal be not granted as there were no prospects of success on appeal.

The applicant was facing a charge of rape as defined in s 65 (1) of the Criminal (Codification and Reform) Act [*Chapter 9:23*] it being alleged that on 23 March 2017 and at Village Wenyika Chief Serima, Chatsworth, the accused “unlawfully and intentionally had sexual intercourse with the complainant without her consent.”

The allegations the accused was facing are fully outlined at p 34 of the record which is the outline of the state case.

It is this court’s considered view that from the evidence led by the complainant, the state proved its case beyond reasonable doubt.

The complainant gave a detailed account relating to the circumstances leading to the commission of the offence.

Complainant stated that accused was an elder of their church and accused, on the fateful day, visited her in pursuance of a \$1.00 that was owed to him.

Accused insisted on waiting and putting up at the complainant's homestead till the early morning hours. Complainant clearly explained to the court how accused "tripped" her and removed her clothes and had sexual intercourse with her without her consent. (See p 39 to 40 of the record).

She stated that accused threatened her not to report the matter to her husband. She explained that she was alone. She wanted to inform her husband first.

It is this court's considered view that the accused was placed at the scene of the crime. Similarly this court is of the view that, the cross examination of the complainant by the accused, failed to destroy the complainants case. The only salient issue raised by the accused is why the complainant did not scream.

Complainant stated that she was alone coupled, with the fact that this happened as late as 3 a.m. Clearly her version of events is to be believed.

The court *a quo* cannot be faulted in its analysis and acceptance of the evidence led by the complainant. It held that the complainant did not waiver in her evidence.

The court *a quo* also held that the accused failed to cross examine the complainant on the issue of the sexual intercourse (see page 27) and failed to substantiate his "defence of alibi" that he was not available at complainant's homestead when the incident took place.

Similarly this court is of the view that the evidence led, in the court *a quo* does not establish the possibility of a consensual sexual encounter between the accused and the complainant.

Accordingly this court holds that there are no reasonable prospects of success on appeal against conviction.

Similarly this court is of the considered view that the court *a quo* did not misdirect itself as regards the issue of sentence.

The complainant in this case was aged 16 years old and, in effect was a minor, though married, and invariably the conviction would attract a lengthy custodial sentence. The sentence imposed by the court *a quo* does not induce any sense of shock.

Accordingly the application for bail pending appeal is hereby dismissed.