**DANNYBOY GANDANHAMO**

**VERSUS**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE
CHEDA AND MATHONSI JJ
BULAWAYO 12 JULY 2010 AND 15 JULY 2010

*Mr. J. James* for appellant
*Mr. T. Hove* for respondent

Criminal Appeal

**MATHONSI J:** The Appellant was convicted by the Magistrates Court of contravening section 89 of the Criminal Law (Codification and Reform Act), [Chapter 9:23] (Assault) and sentenced to a fine of 2 million Zimbabwe dollars or 10 days imprisonment. A further 6 months imprisonment was suspended on condition of good behaviour.

He appealed against both conviction and sentence on the following grounds.

"**AD CONVICTION**

(1) The court a quo erred in law in convicting the Appellant based on the evidence of a single witness who clearly has an interest in the matter.
(2) The court a quo erred in finding that the complainant was a credible witness notwithstanding that there was no corroboration of her evidence, especially in respect of the injuries she alleged sustained.
(3) The court a quo misdirected itself in finding that the complainant's recitation of alleged previous incidents amounted to similar fact evidence which corroborated the complainant's evidence.
(4) The court a quo misdirected itself in finding that irrelevant and immaterial issues such as that she had no maid, no messenger, and the Appellant travelled on holiday alone without the complainant, that she looked after the disabled child, amounted to corroboration of the complainant.

(5) The court a quo erred in law in assessing complainant's evidence in not giving regard to the obvious instability in her character which shows her to be paranoid and suffering from a persecution complex.
(6) The court a quo misdirected itself in finding that the complainant was justified in not seeking medical attention in that the Appellant would influence the subsequent medial report to be compiled by a professional medical person.
(7) The court a quo erred in law in not giving sufficient weight to the inordinate delay in not reporting the alleged assault, and the reasons for the change in the complainant's stance and the belated report.
(8) The court a quo erred in law in not giving sufficient weight to the fact that the state did not adduce any evidence from the Police to show that on the night of the alleged assault complainant did make a report, and the police officers attending to her did observe injuries on the complainant?"

This is a case in which the state led evidence from a single witness, the complainant with absolutely no other supporting evidence or corroboration, not even a medical report to support the alleged assault.

In addition to that, the complainant did not immediately report the assault, if she did nothing was done to prosecute the Appellant for 7 months. No cogent explanation for the delay was given with the complainant telling the trial court that she initially forgave the Appellant and did not press charges but changed her mind when, months later, the Appellant assaulted her again assisted by an employee Kuda.

It is improbable that Appellant would have been assaulted on this occasion thereby forcing her to resuscitate an old case instead of reporting the then current assault. It is in that light that all the liberal allegations of assault and abuse made by the complainant must be viewed.

The entire evidence of the complainant appears suspicious and unreliable. She passes out as someone given to flights of the imagination which comes out clearly when she claims

that Appellant assaulted her with the assistance of the maid when at the same time she claims that there was no maid and that she was always alone.

It is surprising that the trial magistrate accepted all the uncorroborated evidence of the complainant hook, line and sinker to the extent of making findings that all that she was saying in court was "common cause" even when all of it was being challenged by the Appellant.

While the trial court is entitled to convict on the single evidence of the complainant, for that to happen the evidence must be clear and satisfactory in every material respect. To the extent that the complainant had an interest to serve it being common cause that the parties were fighting over occupation of the matrimonial house, the learned trial magistrate was required to approach her evidence with extreme caution and should have sought corroboration of her evidence. See *S v Zimbowera* 1992(1) ZLR 41(S) at 42 E-G; *S v Shoniwa* 1990(1) ZLR 311(S) and R v Ellis 1961 R & N 468 (FS).

The evidence of the complainant was far from being clear and was certainly not satisfactory. It was generally incoherent and in answer to simple questions she went on a tirade of irrelevant and extremely unhelpful stories like the claim that Appellant goes on expensive holidays alone, does not allow her to have access to vehicles and that he has not hired a messenger for her.

*Mr James* who appeared for the Appellant argued that not only was complainant vindictive but she also had a motive to benefit herself and as such her evidence should be treated with caution. I am inclined to agree with *Mr James* because one can assign no other reason for the complainant's failure to seek medical treatment if she had injuries and to press charges of assault some 7 months after the alleged offence was committed. It is not clear why

everybody including senior doctors like Dr Omara, nurses and employees would turn against her, insult her at every turn and some assault her as she claims.

There is substance in *Mr James's* submission that complainant exhibited some instability in her character. Indeed she may have been suffering from a persecution complex. The learned trial magistrate misdirected herself in accepting her uncorroborated evidence as gospel truth and holding that her claims of alleged previous assaults were similar fact evidence pointing to the guilt of the Appellant. *Mr Hove* who appeared for the state conceded, and in my view rightly so, that in light of these misdirections, the conviction could not be sustained.

In the result, the conviction of the Appellant is set aside and in its place is substituted the order that the Appellant be and is hereby found not guilty and acquitted.

Mathonsi J.....

Cheda J agrees.....

*James Moyo- Majwabu and Nyoni*, appellant's legal practitioners
*Criminal Division, Attorney General's Office*, respondent's legal practitioners