ANDERSON TACHI
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE and BERE JJ
HARARE, 01 July 2014

Criminal Appeal

V. Masvaya, for the applicant
Ms F. Kachidza., for the respondent

BERE J: This is an appeal against both conviction and sentence by the appellant pursuant to his conviction on a charge of rape in violation of s 65 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*].

The basis of this appeal is that the evidence led at the trial did not support the conviction that followed and that consequently the trial court ought to have acquitted the appellant.

The appellant raised concern with the lack of corroboration on the evidence given by the complainant and opined that the second state witness, Clara Chiweshe was not a material witness given the circumstances of this case.

It was further the appellant's contention that the delay in having the rape allegations reported ought to have benefited the appellant and not the State.

As against sentence the appellant argued that the effective 15 year prison term induced a sense of shock and that in the event of the conviction being upheld this court be at large in respect of the sentence.

An analysis of the judgment of the court *a quo* demonstrates in my view that the learned magistrate adequately dealt with the appellant's concerns.

The learned magistrate observed that although the alleged rape had occurred in 2006 the report was only made in 2011 through the complainant's head teacher at Pota Primary School to whom the complainant revealed the rape following her enquiry.

It is true that the revelation of this rape did not follow the usual trend in the majority of similar matters that these courts have dealt with. This case only came to light after the school head had enquired from the complainant what had happened to her.

The court *a quo* accepted the evidence of the school head that during the year 2011, the complainant used to cry a lot in class. It was when she sought clarification from the complainant that the girl revealed to her that other pupils led by her sister had been mocking her about what had been done to her. Further probing by the school head led to the complainant revealing the rape that had been perpetrated against her by the appellant.

The vigilance on the part of the school head led to the report of this offence to the police leading in turn to the subsequent prosecution of the appellant.

The court made a specific finding that this particular witness's observation that she saw the complainant distressed and crying qualified her as a material witness.

The court *a quo* also made it a finding of the court that this witness could not have exaggerated on her testimony as she simply told it as she saw it. I accept this finding and in my view such a finding requires no interference from this court. The witness must be commended for her alertness which led to the prosecution of the appellant and she remains a very material witness.

The court *a quo* made an assessment of the witness's evidence in the context of the apparent delay in the report of the rape in question. The complainant gave a detailed account of how she was sexually assaulted by the appellant. The court concluded she was truthful in her testimony and remained steadfast in her allegations against the appellant even when she was subjected to cross-examination.

Issues to do with the credibility of witnesses are largely the domain of the court a quo unless there is some compelling evidence forcing the appellate court to depart from this long established principle.

The complainant explained to the satisfaction of the court a quo the circumstances surrounding the delayed report which could not be divorced from the threat she was allegedly subjected to by the appellant at the time she was sexually molested. I am unable to make a finding to the contrary.

It must be emphasized that at the time of the alleged rape the complainant was no more than 6 years old and she was quite vulnerable. Young children tend to be affected by threats more than mature individuals.

The trial court made a specific finding that there was no cogent reason why the complainant would have lied against the appellant by raising these very serious allegations. Equally true was the appellant's failure to bring out a plausible explanation as to why the complainant was adamant that he raped her.

The magistrate was correct in his finding that nothing really turned on the evidence of Esnath Chinoumba the complainant's grandmother who was apparently the appellant's girlfriend at the time the rape was alleged to have taken place.

In the court's view, she would have been compromised or constrained to reveal this offence because of her position at the time.

The appellant went to town about the need to have the complainant's testimony corroborated. The position of the law has been re-stated in a plethora of cases. These authorities, whilst emphasizing that corroboration is no longer a requirement in our law re-affirm that the circumstances of the alleged sexual intercourse need to be carefully considered.

In the case of *S* v *Nyamimba* 2002 (2) ZLR 607, one of the numerous cases decided after the leading case of the *S* v *Banana* 2000 (1) ZLR 607 the court made the following observations:-

> "Thus once a trial court finds, as it did in this case, that the evidence of the complainant was clear and satisfactory in every material respect and that the witness was credible, there was no requirement that her evidence be corroborated by other evidence."

I am satisfied beyond reasonable doubt that the conviction in this case was safe and this court need not interfere with it.

As regards sentence, given the recurrence of matters of this nature and their sad and painful impact on the victim, it cannot be seriously contended that a prison term of 18 years with 3 years suspended induces a sense of shock and outrage more so if regard is had to the disparity in ages between the complainant (6 years at the time) and the appellant who was 61 years at the relevant time.

Consequently, the appeal is dismissed in its entirety.

BERE J……..

HUNGWE J agrees:…….

Mukushi, Foroma and Maupa, Appellant's Legal Practitioners
National Prosecuting Authority, Respondent's Legal Practitioners