PATRICIA SAREWA
versus
THE STATE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 1 September 2014 and 9 September 2014.

Bail application

L Zero, for the applicant
Ms. E Kachidza, for the respondent

BHUNU J: The applicant acting in common purpose and consort with two others was convicted after contest of assault as defined in s 89 (1) of the Criminal Law (Codification and Reform) Act [*Cap* 9:23] in the Magistrates Court sitting at Harare on 10 July 2014. Despite being convicted of the same offence the accused was sentenced to a custodial sentence whereas her co-accused were both sentenced to non-custodial sentences.

She was sentenced to 24 months imprisonment of which 6 months imprisonment was suspended for a period of 5 years on the usual conditions of good behaviour. The trial magistrate differentiated the sentences on the basis of the accused persons' varying degrees of participation and moral blameworthiness.

The trial magistrate found that first and second accused were guilty of assaulting the complainant with clenched fists and open hands respectively whereas the applicant was guilty of assaulting her with a brick on the face. His verdict was as follows:

"Verdict: - Accused 1- Guilty of assaulting with clenched fists.

Accused 2 (Applicant) – Guilty of assault using a brick.

Accused 3 – Guilty of assault using open hands."

The verdicts were consistent with the complainants' evidence at page 23 of the record of proceedings.

Her evidence found ample corroboration in the evidence of an independent eye witness Sam Mutonga at pages 31 and 32 of the record of proceedings. This is what he had to say:

> "2nd Accused assaulted complainant with a brick and complainant fell to the ground. 2nd accused ran off and 1st accused and 3rd accused person dragged her towards the road."

According to the undisputed medical report the complainant sustained the following injuries:

> *"Severe blunt trauma, likely a foreign object. Severe head trauma, lacerations on the nose and lower lip. Bruises on the lower left chest, laceration on the parietal skull, with hair pulled out. Broken nose and dislocated jaw, 3 fractures."*

The facts found proved at the trial were that the applicant was in an adulterous relationship with the complainant's husband. On the fateful day acting on information she went to first accused's house where the applicant was congregating with her friends to confront her. She was alone and unarmed. When the complainant confronted her applicant mocked her and bragged that her husband did not pay. This provoked a scuffle between the two with the applicant's friends joining in on her side.

The applicant then bolted out of the house. Instead of fleeing from trouble she armed herself with a brick and resolutely waited for the complainant to emerge from the house so that she could attack her. When the complainant eventually emerged from the house she bushed her with the brick. Despite her denial there was overwhelming evidence that she viciously attacked the complainant on the face with the brick. As I have already stated the complainant's evidence to that effect was amply corroborated by an independent eye witness Sam Mutonga who had no motive whatsoever to falsely implicate the applicant.

Although in her appeal she now wants to play victim that clearly goes against the grain of evidence. The evidence establishes quite clearly that apart from provoking the complainant she was the aggressor. She viciously attacked the complaint with a brick on a vulnerable part of the body thereby inflicting serious injury including 3 fractures, a dislocated jaw and a broken nose. In my view she was luck not to be charged with attempted murder. The court's finding to the effect that the applicant caused most of the injuries on the

complainant by attacking her with a brick cannot be faulted as it is consistent with all the available evidence. It is trite that community service is meant for minor offences to avoid the incarceration of convicts for minor offences. That being the case the trial magistrate cannot be faulted for taking a serious view of the offence. He therefore correctly classified the offence as a serious aggravated assault. His basis for differentiating sentences was eminently reasonable and beyond reproach.

In my view, once the trial court had correctly classified the offence as serious it was not necessary to consider whether community service was available as a form of punishment because such a penalty is unavailable for serious offences. It was therefore implicit in the magistrate's ruling that community service was out of question in this case.

The applicant attempted to hide behind her femininity to avoid jail. I take the view that women who commit serious man sized offences cannot hide behind their skirts. This is particularly so in this modern age of gender equality.

For the foregoing reasons I come to the conclusion that there are absolutely no prospects of success in this case. It is accordingly ordered that the application for bail be and is hereby dismissed.

W O M Simango, the Applicant's Legal Practitioners
The Prosecutor General's Office, the respondent's legal practitioners.