

PARTSON GORERAZA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 19 July 2013

E. Chatambudza, for the appellant
T. Mapfuwa, for the respondent

Bail Pending Appeal Ruling

MWAYERA J: The applicant approached the court with an application for Bail pending appeal against both conviction and sentence by the magistrate court.

The applicant was convicted of rape after a protracted trial and sentenced to 10 years imprisonment with 4 years suspended on the usual conditions of good behaviour. The state in its response to the bail application did not oppose bail pointing out that the matter was arguable on appeal. The state however correctly observed that for a conviction of rape of an 11 year old the sentence imposed cannot be viewed as outrageous.

There is nothing to criticise about the manner in which the trial court exercised its sentencing discretion. The trial court properly assessed the sentence and there is no likelihood of interference with such sentence as such no prospects of success on appeal in relation to sentence.

However, upon perusing the record of proceedings and regard having been had to the applicant and state submissions it is apparent there are some loopholes in the evidence presented before the trial court. The complainant being a juvenile certainly cannot be expected to have reacted to the sexual abuse in the same manner as an adult woman, In an event there is no standard reaction to rape. However it is trite that the rape survivor ought to make a timeous report to the person whom they would ordinarily be expected to report. The complainant

immediately notified the aunt that is the accused's wife who was bedridden and she was advised not to disclose till after the death of the aunt.

The aunt indeed passed on but the complainant did not report till after the mother had notified her of a misunderstanding between the accused and the complainant father. From the evidence on record it is not clear how the complainant revealed the rape allegations. The mother gave two versions that the complainant fell ill and notified her that the accused would assault and abuse her. She assumed abuse to be sexual abuse. She stated that when she informed the complainant about the misunderstanding between the complainant's father and the accused, that is when the complainant revealed the abuse. The record also said she reported because she was having night mares with the dead aunt telling her to report the abuse.

This set of evidence gives rise to the question of whether or not the report was made voluntarily without any coercion on external influence. The question of genuineness of the report then comes in. The state counsel Mr Mapfuma rightly conceded that the appeal is arguable, there is a danger of false incriminating where the report is haze and the circumstances surrounding how the sexual abuse occurred are not clear. It is with these gaps in the evidence that the court feels that may be another court given the same set of evidence can come up with a different decision. It follows therefore that there are prospects of success on appeal as regards conviction warranting admission of applicant to bail as prayed for in the draft order.

Nyamushaya, Kasuso & Rubaya, applicant's legal practitioners