

REGIS KAMWAYA
versus
THE STATE

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 30 September and 5 November 2013

T. Thondhlanga, for the applicant
A. Masamha, for the respondent

Bail Application.

BHUNU J: The applicant is in custody on charges of rape as defined in s 65 of the Criminal Law (Codification and Reform) Act [*Cap. 9:23*] and extortion as defined in s 134 (1) (a) of the Act. The allegations against him are that on 27 August 2013 he accosted and confronted the complainant and her boyfriend as they were walking home around 1930 hours. Impersonating the police the accused arrested them on trumped up charges of loitering in a public place for purposes of prostitution. He then relieved the complainants of their cell phones a Nokia Asha 201 and Samsung J700.

The accused then led the two to a secluded place where he released the boyfriend and remained with the complainant still handcuffed. Thereafter he demanded money before he could release her. The complainant gave him \$10.00 where upon the accused removed the handcuffs. He then forcibly had sexual intercourse with her without her consent. When he was done he ordered the complainant to go home.

The matter was reported to the police and the long arm of the law caught up with the accused on 20 August 2013 after he had fled to his rural home in Rusape. Upon his arrest property stolen from the complainants comprising a cell phone and pouch bunch of keys as well as handcuff keys were recovered from him.

The accused is also alleged to have made indications demonstrating how he had committed the offences. He however denied all the allegations levelled against him. He denied that any property belonging to any of the complainants was recovered from him. He

however admitted that a cell phone pouch was recovered from him but denied that it belonged to the complainant.

The accused does not deny having met the complaints on the date, time and place as alleged by the state. His defence is that he was in love with the first complaint that he intended to marry. When he saw her walking in the company of a man an altercation ensued and he ended up assaulting her with open hands. Shortly thereafter he left for his rural home to attend his brother's memorial service. He denied that when he went to his rural home he was fleeing from the police.

The arresting detail Assistant inspector Innocent Taruvinga has a different story to tell. He filed an affidavit in which he deposed that a day after the commission of the offence he teamed up with other police officers and waylaid the accused at the scene of crime. The accused later emerged from the dark and the police officers confronted him and identified themselves to the accused.

The accused fled and resisted arrest during which he had a scuffle with the police dropping his cell phone serial number RFN633735E, a black casual jacket and a black woollen hat in the process. The accused managed to escape from the police but the police managed to trace him to Rusape using the contact numbers in his cell phone. Upon being confronted at his rural home the applicant again fled and resisted arrest. He was however subdued and apprehended resulting in his arrest and confinement

The arresting detail's averments concerning the events surrounding the applicant's dramatic arrest stands virtually unchallenged. The charges that he is facing are serious and overwhelming such that he cannot be trusted to attend his trial if released on bail. It is now settled law that such an applicant is disqualified from being granted bail.

It is accordingly ordered that the application for bail be and is hereby dismissed.

Thondhlanga & Associates, applicant's legal practitioners
The Prosecutor general's Office, respondent's legal practitioners