

LOVEMORE DEWA
versus
THE STATE

HIGH COURT OF ZIMBABWE
BERE, TAGU JJ
HARARE, 25 February 2014

Criminal appeal

T. Machaka, for the applicant
R. Chikosha, for the respondent

TAGU J: At Gweru Magistrates Court on 27 November 2012, and after a contested trial the appellant was convicted of theft as defined in s 113 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] and sentenced to pay a fine of \$ 300.00 or in default of payment to undergo 3 months imprisonment. In addition 3 months imprisonment were suspended on condition the appellant restitutes the complainant the sum of \$ 733.00 by 31 December 2012 through clerk of court Gweru at 4 pm.

The appellant has appealed to this court against both conviction and sentence. The appeal is opposed by the state.

The basis of the appellant's conviction is that the court *a quo* erred in accepting the complainant's evidence that he had not been given his money. He thus raised the issue that complainant's evidence was not corroborated.

We were not persuaded by the arguments advanced by the appellant for the following reasons. The appellant and complainant were total strangers having met only for a few hours. The police clearance that was used to ferry the beasts in question was in the name of the complainant. Meaning that complainant accepted to assist the appellant to sell his beast. Money meant for the complainant was collected from the CC sales by the appellant. This was confirmed by the CC sales records and the cashier. From the evidence the appellant collected the money after putting pressure on the buyers. The appellant therefore did not have prior authority to collect money on behalf of complainant alone.

When the appellant phoned complainant, and when the complainant indicated that he was on his way to CC sales, it would have been prudent for the appellant to wait at CC sales and hand over the money there than to take the money to Bata. It therefore boggles the mind

why and how a total stranger could fabricate the charges against the appellant. The appellant is admitting all that is proven by records and denies what is not written down. But there is no proof that he indeed gave the complainant his money.

The trial court properly found that the complainant was a credible witness. In terms of s 269 of the Criminal Procedure and Evidence Act [*Cap 7:09*] single witness evidence can be sufficient to secure a conviction if it is from a competent and credible witness. Corroboration is not necessarily a requirement. A common sense approach has to be adopted by the court.

In *Mpetha and Others* 1983 (4) SA 262 it was held that “credibility of witness remains in the domain of the trial court, to judge whether is worthy believing or not, mainly basing on his demeanor in the witness box how he testifies, responses to questions whether generally his story is coherent and worth believing”

In *casu* there is no misdirection committed by the court *a quo* which is so gross so as to vitiate its own findings. The conviction is therefore proper. The sentence too cannot be disturbed as it is in accordance with real and substantial justice.

The appeal is therefore dismissed in its entirety.

Pundu & Company, appellant’s legal practitioners
Prosecutor General’s Office, respondent’s legal practitioners

TAGU J

BERE J agrees