

LOVEMORE MUNYORO  
versus  
THE STATE

IN THE HIGH COURT OF ZIMBABWE  
CHATUKUTA & TAGU JJ  
HARARE, 16 July 2014 and 22 September 2014

### CRIMINAL APPEAL

*H.R.B. Tanaya*, for the appellant  
*R. Chikosha*, for the respondent

TAGU J: At the hearing of this matter on 16 July 2014 we delivered an *ex tempore* judgment and dismissed the appeal in its entirety. We have now been asked to furnish the full reasons. These are they.

The appellant pleaded guilty to and was convicted of assault as defined in s 89 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. He was sentenced as follows-

“12 months imprisonment of which 3 months imprisonment is suspended for 5 years on condition accused does not within that period commit an offence involving the use of violence upon another for which he is sentenced to imprisonment without the option of a fine. Effective 9 months in prison. In addition the 2 months in prison suspended on (*sic*) MW73/11 are hereby brought into effect. Total effective 11 months imprisonment.”

The appellant appealed against both conviction and sentence. The appeal was opposed by the state.

The brief facts which are common cause and to which the appellant admitted were that the complainant was employed as a shop attendant at Magwaza General Dealer, Nyamuzara business centre, Murewa. The appellant was a Movement for Democratic Change “T” political party aspiring candidate for ward 11 Murewa West Constituency. On 23 July 2013 at around 1700 hrs the appellant approached the complainant at her work place and accused her of having removed his campaign posters which appellant had stuck inside the bottle store of complainant’s employer. An argument arose and the appellant pushed the complainant once by the shoulder and he left. The complainant did not sustain any injuries.

As regards conviction the appellant raised two grounds in his notice of appeal. He argued that-

- “(i) The learned Magistrate erred in convicting the appellant of assault when it was not proved beyond reasonable doubt that the appellant assaulted complainant as envisaged under s 89 (1)(a) of the Criminal law codification And Reform Act [Cap 9:23] especially when regard is had to the following factors-
- (a) Accused allegedly only “pushed” the complainant on the shoulder;
  - (b) The severity of the push is unknown;
  - (c) No bodily harm was caused to the complainant and;
  - (d) There is no risk of possibility of bodily harm that could have arose from the alleged facts.
- (ii) The learned magistrate erred in that he did not properly canvas the essential elements of the offence with the appellant when he recorded the plea of guilty. Had he done so, it would have emerged that no offence was committed.”

After going through the appellant and respondent’s heads of arguments as well as hearing oral submissions by Mr *Mandeverre* for the applicant and Mrs *Kachidza* for the respondent we of the view that the court *a quo* did not err at all. There was no misdirection on the question of conviction.

In the first instance, the appellant accepted all the facts without any amendments. He pleaded guilty to the charge. The court *a quo* canvassed all the essential elements of assault. The following was the exchange that took place between the appellant and the trial magistrate-

**“ESSENTIAL ELEMENTS**

Q. Admit on 23/07/13 at Nyamuzara business centre Murewa you pushed complainant once?

A. Yes

Q. Admit you knew or foresaw that bodily harm would result?

A. Yes

Q. Any right?

A. No.

Q. Any defence?

A. No.

Verdict Guilty as pleaded”

Section 89 (1) (a) and (b) of the Criminal Law (Codification and Reform) Act [Cap9:23] create the offence of assault. It says-

**“89 Assault**

(1) Any person who-

(a) commits an assault upon another person intending to cause that other person bodily harm or realising that there is a real risk or possibility that bodily harm may result or

(b) threatens, whether by words or gesture, to assault another person intending to inspire, or realising that there is a real risk or possibility of inspiring, in the mind of the person threatened a reasonable fear or belief that force will immediately be used against him or her; shall be guilty of assault.....”

Assault is defined in s 88 (a) – (c) of the same Act. Bodily harm is also defined as meaning “any harm causing pain or discomfort to the body, or any impairment of the body or its functions, whether temporary or permanent”.

In *casu*, the appellant admitted that he pushed the complainant by the shoulder. Counsel for the appellant conceded that pushing someone does cause discomfort to the person being pushed. Even a mere threat without physical contact amounts to an assault as long as it instils a reasonable fear or belief that force will immediately be used against him or her. The degree of the discomfort or the injury will only be of relevance for purposes of sentence only. See *S v Muchadakuenda* HH 61/02 referred to by the counsel for the respondent.

In the circumstances we dismissed the appeal against conviction.

As regards the appeal against sentence we were of the view that the sentence was appropriate because firstly, appellant was not a first offender. He has a relevant previous conviction for assault. He was not deterred by the previous conviction. Secondly, this assault was politically motivated hence an effective custodial sentence was called for. See *S v Muyambo* 1980 ZLR 411.

For these reasons we again dismissed the appeal against sentence.

CHATUKUTA J, agrees \_\_\_\_\_

*Kadzere, Hungwe and Mandeverere*, appellant’s legal practitioners,  
*National Prosecuting Authority*, respondent’s legal practitioners.