

NICKSON MANDE
versus
THE STATE

HIGH COURT OF ZIMBABWE
FOROMA J
HARARE, 15 February 2018

Bail Application

R Macharaga, for the applicant
S W Munyoro, for the State

FOROMA J: The applicant has been remanded in custody on a charge of rape. As rape is a schedule 3 offence he had to apply for bail to the High Court.

Bail was opposed.

The applicant denies any sexual encounters with the complainant but the medical affidavit deposed to by one Itai Chindondondo a Clinical Officer at Mt Darwin Hospital shows that perpetration definitely took place. His comment is “Definite Evidence of Penetration”. This medical report shows that there is a full thickness tear of the hymen at 3 o’clock.

Form 242 (Request For Remand) does not make mention of the complainant.

What is significant however is that on the allegations it is suggested that the applicant had sexual intercourse with the complainant on an unknown date on several occasions between March and September 2017 without complainant’s consent.

Bail was opposed by the investigating officer on the grounds that the applicant might abscond as he had fled to RSA after committing the offence which allegation applicant denied.

When the Investigating Officer Constable Mapunga was called to testify in support of his opposition to bail he testified that one Webster Sithole had informed him that applicant had spent some time with applicant between November 2017 and January 2018 in Durban South Africa.

The applicant disputed this and his counsel called Chipu Mande the sister to the applicant who testified that she separated with Webster Sithole in 2016 when she left Durban

Chipo disputed that the applicant had been to Durban after the alleged offence I could not accept Chipo's testimony as she was not in R.S.A at the time i.e. in November 2017 and January 2018. It is suggested in the application that applicant has never been to R.S.A as he has no passport or any travel documents. Considering that our borders are porous one does not always need a passport to cross them.

The respondent produced the evidence of sexual intercourse even though the hymen tear was not fresh. The hymenal tear could not have been fresh considering that the examination was conducted on 12 October 2017 bearing in mind that the alleged sexual abuse took place between March and September 2017.

It is to be noted that no explanation has been given as to why there was such a long delay in reporting the sexual assault. For purposes of this application there is no suggestion as to why complainant did not raise any hue or cry.

It is not disputed that the presumption of innocence operates in favour of the applicant and that in the absence of compelling reasons an accused is entitled to his liberty pending trial. I do not consider that any compelling reasons have been advanced against the grant of bail to applicant.

The risk of absconding is never one which conditions of bail short of refusal can guarantee. The applicant is a married adult aged 30 who is unemployed.

The evidence disclosed in the State documents is not such as can be regarded as overwhelming. The risk of absconding can be curtailed by appropriate reporting conditions.

In the circumstances the applicant is granted bail on the following conditions

- (1) Applicant to deposit the sum of \$100-00 with the Clerk of Court Mukumbura Magistrate's Court.
- (2) To reside at Munizhu Village Chief Bhuswiti Munhumbura Mt Darwin until his matter is finalised.
- (3) To report twice a week on Monday and Fridays at Darwin Mukumbura ZRP between 8am and 6:00 pm until the matter is finalised.
- (4) Not to interfere with State witness or police investigations.