

Judgment No. S.C. 208/98  
Crim. Appeal No. 10/98

SYDNEY MUSIKAVANHU v THE STATE

SUPREME COURT OF ZIMBABWE  
McNALLY JA, EBRAHIM JA & MUCHECHETERE JA  
HARARE, OCTOBER 12, 1998 & JANUARY 25, 1999

*C K Hungwe*, for the appellant

*P Muziri*, for the respondent

MUCHECHETERE JA: The appellant was convicted of three counts of indecent assault, one count of rape and one count of attempted rape. On the first count of indecent assault he was sentenced to twelve months' imprisonment with labour; on the second count he was sentenced to six months' imprisonment with labour; and on the third count he was also sentenced to six months' imprisonment with labour. He was also sentenced to ten years' imprisonment with labour in connection with the rape conviction and seven years' imprisonment with labour in connection with the attempted rape conviction. The sentences in connection with the three counts of indecent assault were made to run concurrently, resulting in an effective sentence of one year's imprisonment with labour. This resulted in a total sentence of eighteen years' imprisonment with labour. Of that, five years' imprisonment with labour was suspended for five years on the usual conditions of good behaviour. He appeals against both convictions and sentences.

The appellant was the headmaster at Chipindura High School in Bindura and all the complainants were students at his school at the relevant time.

The facts which are common cause in the first count are that the complainant in that count (“the first complainant”) was the appellant’s niece. The appellant called her from the school’s hostel to his residence during the afternoon of 8 February 1992. The appellant, claiming to be acting on the instructions of the first complainant’s parents, inquired into the sexual life of the first complainant, that is, as to whether or not she was a virgin.

The first complainant’s disputed evidence was to the effect that when she got to the appellant’s residence she found him in his bedroom. He invited her to enter the bedroom and told her to sit on the bed. She complied. He then told her that he had been instructed by her parents, not as a headmaster but as an uncle, to find out if she was still a virgin. She told him that she was still a virgin. The appellant was not satisfied with her reply and decided to physically examine her. He proceeded to push the first complainant to lie on the bed on her back and thereafter pushed his hand underneath her skirt and her pants and inserted his two fingers into her vagina. It was painful. When the appellant realised that he could not get through because she was a virgin he stopped. This was all without the first complainant’s consent. She cried and was angry because she could not understand why her parents would put her through all that. After that the first complainant went back to the hostel in a state of distress. She felt humiliated, angry and confused.

The first complainant did not, for a long time, talk to anyone about the matter. She stated that even if she had seen her parents at the time she would not have talked to them because she was feeling humiliated. She, however, stated that she wrote a letter which she intended to send to her parents threatening to commit suicide because of the incident, but decided not to send it because of the illness of her father. The letter was eventually discovered by her aunt, one Concilatta Mahachi (“Concilatta”) when she was cleaning her bedroom some time in October 1992. She gave the letter to the first complainant’s father. The first complainant later also told another aunt, one Concilatta, and her sister Julia about the incident in a casual passing conversation in April 1992. Later Concilatta went to the school to ask the first complainant why she had written the letter. The first complainant then related the whole incident to her and the aunt arranged for the first complainant to go home to tell her (the first complainant’s) father about the incident.

At home the first complainant’s father denied ever giving instructions to the appellant for the first complainant to be questioned and examined about her sexual conduct. The whole incident had the first complainant’s father dumbfounded. It also angered him. After the first complainant related the incident, she went back to school.

The first complainant denied that all that happened on the day in question was that the appellant counselled her on sexual behaviour. She also denied that one Lyndiwe Musikavanhu and the appellant’s wife were present during the counselling session. She denied that she made up the whole story after her father had beaten her. She also denied she was framing the appellant because of the problems

she was having with her parents. She stated that there was no reason for her to frame him and, in any event, he was her uncle.

The first complainant admitted that she took part in a demonstration against the appellant but denied that she was instrumental to it. According to her, the demonstration was started by Upper Sixth girls and she was woken up from her room by her roommate and they thereafter joined the demonstration. She added that to suggest that she and the sixth complainant were the ones who conspired to make up the reports of sexual assaults which led to the demonstration was not true. According to her, it was not possible for her, then a fifteen year old Form III girl, together with the sixth complainant, then a Form IV girl, to have invited all the elder girls in Forms V and VI to a demonstration.

She, however admitted that after another incident between the appellant and herself and the sixth complainant on another weekend, the latter talked to her (the first complainant's) father and mother and told them that the appellant had raped her. She was asking for their advice. She denied that she and the rest of the complainants conspired to make false allegations of rape against the appellant. She wondered why it was that they would make false allegations against him in particular when there were seven other male teachers at the school. She stated that there was neither reason nor motive to frame or conspire against the appellant.

Under cross-examination the first complainant maintained what she stated above and was adamant that the appellant's wife was not present when she met the appellant on the day and that the appellant physically examined her that day. She

maintained that during the examination she became angry and burst out crying. She also maintained that for some time she did not talk to anyone about the matter because she felt humiliated. And she did not want to talk to her parents because she thought they were the ones who had made her go through the humiliating experience. She felt bad about them. She, however, later spoke to Concilatta and Julia and also wrote the said letter to her parents. Concilatta was the one who persuaded her to go and talk to her father about the letter and assured her that her parents did not hate her.

She explained that before she related the story behind the letter her father had beaten her for going about telling people that her parents hated her and for not obeying her elder sister. It was during the beating that she told him that her reasons for believing that they hated her were because of what they had caused her to go through. The humiliation of being physically examined by the appellant had caused her to want to commit suicide. This shocked her father who then asked her to tell him everything in detail. She then related in detail what the appellant had done to her, saying this was with the permission of and instructions from her parents. At first he could not believe what she was telling him. But he later took his own decision about the matter. She does not know he did exactly after that but the issue between her and her father ended there. All she knows is that he became angry with the appellant. She felt relieved and was certain the appellant would be confronted. She denied that she raised the issue of being examined by the appellant in order to divert her father's anger against her in connection with her bad behaviour.

The first complainant's mother ("the mother") gave evidence for the State. She confirmed that her family was related to the appellant and that they had

good relations prior to these incidents. He is their family's uncle. They visited each other often. She was not aware of any problems the first complainant was said to have had at school because she was not informed of any. There was never any occasion when she had discussions with the appellant in connection with the first complainant's behaviour at school. She agreed that at some time the first complainant was transferred from Roosevelt High School to the appellant's school, but stated that nothing untoward had occurred at the former school to necessitate the transfer.

On whether she was aware of the allegations that the first complainant had problems because of her relationships with boys she stated that if that had been the case the appellant would have called her to discuss the matter but he did not. She explained that even as a relation the appellant did not approach her about the first complainant's behaviour. She denied the allegation by the appellant that she had approached him about the first complainant's morals and had discussed in particular a boy. She added that she did not know the boy. She also stated that she never approached the appellant for any advice on issues relating to the first complainant.

The mother agreed that in November 1992 she, in the company of her husband, visited the school. She wanted to see one of their children, Julia, who had fallen ill. On arrival they parked their motor vehicle behind the headmaster's (the appellant's) house. The first complainant, Julia and the sixth complainant ran to where they were. Immediately thereafter the sixth complainant took the mother aside and there informed her that she had been raped by the appellant. She appeared to be very angry and scared when she was talking to her. She did not explain in detail what

happened but the mother gathered that the sixth complainant had not reported the incident to anyone before. The mother was scared by this report but advised the sixth complainant to report the incident either to the teacher on duty or to her mother.

The mother agreed that the sixth complainant and the first complainant did visit their house on one weekend. She was ill at the time. The two talked to her husband but she does not know whether the two then discussed the allegations of sexual assaults against the appellant. The mother, however, became aware of sexual assault allegations in connection with the first complainant on the day that her father beat her (the first complainant). The father told the mother then that he was beating the first complainant because she was not obeying her elder sister Julia. Later the father told her about the first complainant's sexual allegations against the appellant. The mother did not, however, discuss these allegations with the first complainant. She confirmed the incident in connection with the finding of the suicide letter by Concilatta. She read the letter. The contents were to the effect that when she (the first complainant) dies they (her parents) should throw her ashes in the Zambezi because they did not love her. Later the mother confronted the first complainant and her explanation was that she wrote it because they (her parents) had authorised the appellant to examine her to see if she was still a virgin. The mother denied that she at any stage gave instructions to the appellant, either as an uncle or as headmaster, for the first complainant to be examined. She never discussed the issue of the first complainant's virginity with the appellant. She did not know whether her husband had discussed the issue with the appellant. On whether because of the relationship the appellant would be allowed to examine the first complainant if he thought

something was amiss the mother's reply was that the appellant as a man was not allowed to do so. That is done by either the child's grandmother or aunt.

After the above, all that the mother became aware of is that her husband went to talk to his uncle, the father of the appellant, about the incidents. On the allegation that these allegations against the appellant were fabricated, the mother's reaction was that when the first complainant was relating the incident to her she was crying and she believed her and as a mother felt hurt - she herself had never been physically examined by a man or an uncle. There was no reason for her (the mother) to fabricate such an incident against the appellant or to conspire against him because she liked the appellant as an uncle.

Under cross-examination the mother maintained the above and denied that she ever approached the appellant for assistance in placing the first complainant at his school. According to her, that would have been her husband's duty. On the reasons why the first complainant was transferred to the appellant's school, the mother stated that her husband explained that he wanted her to be at a school near home which was run by his uncle. She was adamant that she did not approach the appellant about the first complainant's relationship with boys and stated that if she had had problems with her daughter's behaviour in that respect she would have approached the child's grandmother or aunt for assistance and counselling. She denied that at some stage the appellant and his wife made a report to her to the effect that they had counselled the first complainant. She denied that there was any discussion in connection with her children's virginity between the appellant on the one hand and herself on the other in the presence of the children.

The mother stated that the sixth complainant made her report to her before the first complainant was beaten up by her father. The sixth complainant is the daughter of her (the mother's) friend. After receiving the sixth complainant's report she (the mother) told her husband about it. He did not say anything. She did not confront the appellant about the matter.

The mother denied that she influenced the children to demonstrate against the appellant. She stated that she never talked to them about a demonstration and would not have been involved in anything bad against the appellant.

The father of the first complainant ("the father") also gave evidence for the State. He is related to the appellant, who is the son of his mother's brother. He stated that he and the appellant had never wronged each other before. He stated that he transferred the first complainant from Roosevelt High School to the appellant's school. The reason was because he wanted her to join her elder sister who was already attending school there and also because the school was being headed by an uncle. Further, his farm was five kilometres from the school. He denied that the reason for the transfer was because she was behaving badly at Roosevelt High School. He approached the appellant in connection with the transfer and the latter stated that there was no problem. He denied that his wife approached the appellant about the matter and stated that his wife's preference was that the first complainant remain at Roosevelt High School.

The father stated that he never received any report from the school about the first complainant's relation to boyfriends. What he got was a report from

Julia that she had been insulted by one boy at school for rejecting his love proposal and that the first complainant was not listening to her advice. He sent their brother, James, to go and bring the first complainant home so that he could speak to her about the matter. When the first complainant was brought home he beat her up because in addition he had heard that she had the impression that “we (her parents) hated her”. It was during the beating that she informed him that she considered that they hated her because they had sent “Uncle Sydney” (the appellant) to examine her. Thereafter she explained in detail what the appellant had done to her and that the appellant had told her that her parents had sent him to examine her so that he could ascertain as to whether she had played around with young men or boys. He asked her why she had not told him this before. Her reply was that she had made a report to her elder sister and an aunt. His wife only got to know of it much later.

The father was shown the suicide letter after he had already beaten the first complainant. After that he felt bad about beating her. What the first complainant said to him was very strange to him. In the result he decided to go and tell his (the father’s) mother about it. He arranged for his son and his wife to accompany him to Murehwa where his mother lived. Before they left he received a telephone call from the appellant to the effect that his son, James, had assaulted two or three boys at the school. James, who was at the time at home, admitted assaulting the boys because he had been informed that they had insulted Julia. The appellant told him (the father) over the telephone that the law would take its course against James.

Thereafter the father went to Murehwa. There he reported the incidents (the alleged sexual assaults) to his mother. Thereafter he proceeded to

report the incidents to the appellant's paternal uncle - the brother of his father, one Edward Musikavanhu. This surprised the latter. The paternal uncle said he would arrange a meeting so that the family (the father's) would meet the appellant's father and the Senior Minister, Joseph Msika ("the Minister"), who is also a paternal uncle. When he got back home he found that the police had arrested Julia in connection with James' assaults. It was said that they did this because James was not present - the father had taken James with him to Murehwa. Julia was forced to pay a fine of \$20.00. If she had not, she would have been put in the cells. James was never arrested for the offence.

Some time later the father went to the school to inspect his tractor, which was cutting grass there. At the school he saw the acting headmaster (the appellant was on leave). The latter raised the issue of James assaulting some schoolboys. The father admitted that James had done wrong. The father also told the acting headmaster that he wanted to see the appellant.

The appellant later went to the father's house. Initially they discussed James' behaviour and they agreed that he (James) had done wrong but also agreed that the police were wrong in arresting and fining Julia. After that, the father confronted the appellant with the first complainant's allegations. The appellant admitted the allegations but explained that when he did it he was not acting as headmaster but as an uncle. He further went on to say that he did it because he (the father) was always angry with his children and he wanted to see whether they were alright. He then stated that the children were alright and that he (the father) should not scold or insult them. The father, who had become angry and hurt, asked the

appellant where he had heard or seen such things happening - a man physically examining a girl in a virginity test. The father got so angry that he could have assaulted the appellant but decided not to take personal action against the appellant. He decided to put the matter into the hands of the appellant's parents - the father's uncle. He wanted them to resolve the matter. He did not want to take the matter to other quarters because they were related.

The father narrated the story over the telephone to the said uncle, Edward Musikavanhu. The latter made arrangements for a family court ("*dare*"). The *dare* was eventually held at the Minister's house in Borrowdale in the presence of one Rusenza, a Chairman of Bindura and a relation of the Minister, the said Edward Musikavanhu, the Minister, the father's mother, one Kenneth Musikavanhu, the appellant's father, a doctor, one Wilfred who is the son of the Minister, and another grandmother. The father narrated the story to the group. It was the day that the pupils at the appellant's school staged a demonstration. The father got to know about the demonstration after being informed by the Minister. The latter also asked why the appellant was not attending the *dare* - he had not turned up for the court. No-one knew the reason. Later he stated that the Minister decided they should leave this matter because they were relatives and concentrate on the allegations that the appellant had raped some schoolgirls. The father decided to abide by the decision. But all the demonstrating pupils were taken to the police. It was there that the first complainant reported the incidents to the police, even though she knew that the father did not want the matter to go further. He wanted to abide by his uncle's decision.

The father also stated that when the appellant admitted having examined the first complainant, his wife (the father's) was present. It was put to him that she did not mention that during her evidence. His reply was that he was quite certain that she was present.

The father confirmed that the first complainant came home once with the sixth complainant, who was the daughter of a family friend. The sixth complainant sought advice from him. The girl told him that she was raped by the appellant. He asked whether she had reported the matter either to the deputy headmaster or to the matron or to the headgirl or even to a prefect. Her reply was that she had not. He thereafter told her that he was not in a position to give the kind of advice she was looking for and that, in any event, the appellant was his uncle. He therefore told her to do whatever she thought was right.

The father denied that he had fabricated the case against the appellant because he was angry that the appellant had reported James to the police. He also denied that he misconstrued the first complainant's account on what occurred between her and the appellant. He maintained that the first complainant told him that the appellant had inserted two fingers into her vagina. He also denied that he ever sent the appellant to check the behaviour of the first complainant with boyfriends.

Under cross-examination the father maintained that he had good relations with the appellant. He also maintained that he never sought the appellant's advice in connection with the behaviour of the first complainant. And he never had any complaints from the schools in connection with the behaviour of any of his

daughters. The father also stated that when the appellant admitted to him that he had physically examined the first complainant he did not seem to appreciate that what he had done was wrong. That was the reason why the father decided to approach the appellant's parents on the matter. But the father denied that he had given the appellant a mandate to examine the first complainant. He denied that he and the appellant were at cross purposes when they were discussing the matter, in that the word "*kutarisa*" in Shona could mean either "look after" or "examine". He stated that the appellant was aware that he meant physical examination because he told him (the appellant) that the allegation was that he inserted two fingers into the vagina. He also stated that his wife was not seriously involved in the matter. She, as a traditional wife, left him to resolve the matter. Her attitude was that this was a family matter which should be resolved within the family. On the report of rape by the sixth complainant, he stated that the girl asked to speak to him, he did not send for her. He stated that he decided he could not act on her report because she was not his child and also for the reason that she was laying allegations against his uncle, the appellant.

In connection with the demonstration, the father denied that he in any way had a hand in it. He was informed by the first complainant when he got to the school to inspect his tractor that a demonstration had occurred and that officials from the Ministry of Education had come to the school. And he asked what the demonstration was about. He felt uneasy about the matter and was getting embarrassed for his uncle, the appellant. As a result, he left the school immediately.

The father stated that he did not know whether the appellant had been informed of the family court ("*dare*"). He admitted that in the circumstances he

could not therefore accuse the appellant of deliberately absenting himself from the *dare*.

During re-examination the father reiterated that he did not conspire with anyone to make false allegations against the appellant. He reiterated that the appellant admitted to him that he had inserted two fingers into the first complainant's vagina. He thereafter left the matter in the hands of the Musikavanhus, who were the appellant's father and his (the father's) uncles.

Edward Musikavanhu ("Edward") also gave evidence in the matter. He was called by the court to give evidence in the matter. He confirmed that he attended the *dare*, as testified to by the father. He also confirmed that the persons named by the father attended that *dare* and that the appellant did not. According to him, the purpose of that *dare* was to discuss the demonstrations by pupils at the school, and it had been seen fit to call the father (their nephew) to explain the circumstances behind it as his children also took part in it. Edward also confirmed that prior to this incident the relationship between himself and the Musikavanhu family on the one hand and the father's family on the other hand was good. He also stated that he was not aware of the allegations against the appellant at the time the *dare* was held. And that it was at this *dare* that the father laid allegations against the appellant. The father told the *dare* that the appellant had tampered with the first complainant. He used the word "*kutarisa*". They asked him to explain what he meant and he told the *dare* that he meant that the appellant had inserted two fingers into the first complainant's vagina.

Edward maintained that it was the first time that he had heard these allegations. And that before the *dare* the father had only complained that the appellant had caused the arrest of two of his children - Julia and James - by the police.

A second *dare* was thereafter called to discuss the allegations. This time the appellant was called primarily to answer the serious allegations made against him by the father. When the appellant was told about the allegations he broke down in tears and categorically denied them. He told them that he had been asked by the father and his wife to look after the first complainant and that the word “kurarisa” had been used in that context. The confusion between the two meanings of the word, as explained above, led to these allegations. He accepted that he had agreed to and did look after the first complainant generally but denied that he had examined her in the manner alleged by the father. He explained that he could not have done that because he was not an aunt - such an examination is done by an aunt traditionally. The *dare* also asked the appellant about the allegations which were being levelled by the demonstrators and he categorically denied them. Edward thereafter took it on himself to go and explain to the father the appellant’s replies to the allegations in connection with the first complainant. He later saw the father and told him what the appellant had said.

Edward’s replies to the following questions are revealing:-

“Q. Is it not true that from what you have been saying in your answers to the questions from the magistrate that your relationships with the K...s (the father’s family) were cordial, they were fine? A. Up to a point. ...

Q. I wrote you down as saying that your relationship with the K...s, I might be corrected, were cordial up to (the) point of the quarrels which arose out of this case. These are your exact words which I wrote down. So I am simply inferring from them that after these allegations arose, there were quarrels within the family necessitating relatives to take sides. Is that not so?  
A. Can I repeat this one? I am saying the relationship was excellent up to the point of the quarrels of the two. Now how can the families - the K... family and us - quarrel when we were trying to help them resolve the quarrel? Because we were trying to mitigate to make them understand what was all this about and so forth. We told him (the appellant) what (the father) had said.

Q. So are you saying you were neutral during the proceedings and up to now you are neutral in relation to (the father)? A. If I wasn't neutral, I would have been a defence witness. I am not in the defence witness and ...

Q. Yes, now, as of now, as you stand in court now, how do you characterise your relationship with (the father)? A. Obviously it has soured because of this what has transpired, it has soured. ...

Q. And that because of the quarrels, you of necessity sided with the accused person (the appellant)? A. After this issue, there was a follow-up of, from me. I went to (the father's) house to try and brief him of what the accused (the appellant) said, and the next thing I heard was a publication in the paper denouncing us, that the Musikavanhus were intimidating the K...s. To me that was uncalled for because ...

Q. Is it not correct that after these allegations (rape and sexual assaults) arose, you took it upon yourself to defend the accused person. You came up with a strategy to actually defend the accused person from these allegations?  
A. Totally false.

Q. Is it also not correct that you actually assisted the accused person financially to mount his defence to the allegations? A. Yah we did that.

Q. You did? You actually contributed to his ...? A. All of us, yes, as a family.

Q. Which is exactly my point - that you were now biased towards the accused person to the extent that you actually came up with contributions for his defence? A. Yes, all of us, the whole family.

Q. Including who else, who else contributed? A. The senior brother, myself, his son, his brother and many others that found his desperation, he didn't have money to defend himself. If that is the assistance you said we did, yes we did.

Q. So to that extent, I am putting it across to you that you wouldn't want to see him go to prison? A. That is natural. I wouldn't like even (the

father) to go to prison. I would help him if he is threatened by going to prison ...

Q. You see the point I am making is that he confessed, broke down and admitted the offence and then you came up with a strategy that you wouldn't go to the police and admit that he had done this but you came up with a strategy, you sat down and mounted and came up with a defence? A. Are you saying to the court that I told you that he admitted the offence?

Q. I am putting it across to you? A. No, he did not. It is not correct. ...

Q. You even went to the extent of trying to act as his legal guardian, do you recall that? A. Who?

Q. Yourself? A. Who told you that?

Q. You actually wrote a letter? ...

COURT: Explained that under African customary law Edward was entitled to act as legal guardian (father) to the appellant even though he was of age.

Q. Is that not correct? A. That is correct, that is what I acted on yes. ...

Q. Even if the accused person had admitted that he had physically inserted his fingers into (the first complainant's) private parts or even admitted sexually abusing the schoolchildren at Chipindura High School, you wouldn't stand there and say he admitted or he confessed because you have already taken his side? A. So what do you want me to say?

Q. Do you have anything to say? If you have, say it out if you don't ...?  
A. Nothing, completely nothing."

Edward maintained the above during cross-examination.

One Shupi Rhoda Musikavanhu ("the grandmother") also gave evidence. She was also called by the court to give evidence in the matter. She is the mother of the father and therefore the grandmother of the first complainant. She admitted that she attended the first and second *dares*. She stated that the first *dare* was called by Edward, who is her brother, and she was not certain whether it was held

at the Minister's residence or Edward's house. According to her, the purpose of the first *dare* was to ask the appellant about what he had done to the first complainant. They wanted to confront the appellant with the first complainant's allegations, which were to the effect that the appellant had sexually examined the first complainant by inserting his fingers into her private parts. The first complainant had made a report to her parents and this was later conveyed to the grandmother and others.

According to the grandmother, when the appellant was asked, during the second *dare*, about the matter, his response was that he had examined the first complainant because he had been asked by the first complainant's mother to do so. Thereafter the appellant was "then scolded by Joseph (the Minister)", who said: "Shut up, you are a stupid person, why do you do such things". And the appellant broke down. She stated that the appellant did admit to the *dare* that he examined the first complainant in the manner alleged by the first complainant but stated that the first complainant's mother had asked him to do it.

The grandmother explained that the purpose of the second *dare* was for the family to chastise the appellant for what he had done. She considered that this purpose was achieved because the appellant was scolded and warned against ever doing that again. And he accepted his "punishment" by crying.

Under cross-examination the grandmother maintained the above. It was put to her that Edward had stated in his evidence that the appellant had categorically denied the allegations and thereafter broke down in tears. She was adamant that the appellant admitted the allegations but had stated that he was asked to

do it by the first complainant's mother. She stated that Edward was lying on the matter and that he had taken the appellant under his wing and was influencing him to deny the allegations. She went on to state that it was because of that that the appellant's biological father, who was also present at the *dares*, was not in support of his son. On whether there was now a split in the family, the grandmother said that she thought so but had not expected the matter to come to court. She thought that the appellant was going to be corrected (by the family) and that that would be the end of the matter.

The next charge to consider is Count Three. In this count it was alleged that the appellant had unlawfully and indecently assaulted the complainant in that count ("the third complainant") by touching her buttocks with his hand. The third complainant gave evidence in the matter. She stated she was in 1992 a student at the school and the appellant was the headmaster. Some time in July 1992 she went to the appellant for permission to go home for an appointment with her doctor. She also decided to take the opportunity to ask him for sponsorship in connection with a scholarship. She found him in his office. When she entered the office someone was leaving. The appellant closed the door behind him and proceeded to sit on a chair behind his desk. She sat in front of the desk and told him what she had come for. During the conversation the appellant told her that he was interested in her. He told her that he had grown to like her because she was different from the others. He thereafter steered the conversation from what she had come for to a discussion about the pimples on her face. When the third complainant got up to leave the appellant got up and walked towards the door. Before she got to the door the appellant held her shoulders - both his hands were on her shoulders. He thereafter sort of "massaged"

her and she drew away from him and walked fast to reach the door. He, however, got to the door before her and got hold of the handle. He thereafter held the handle with one hand whilst with the other hand he held her buttocks. She was flabbergasted but did not say anything because she respected him as if he was her father. She explained that the hand on the buttocks was also “massaging” her buttocks in the same manner as the shoulders before that.

The third complainant explained that the holding of the shoulders and buttocks was not accidental but deliberate. She stated that the appellant did not say anything during the incidents. She was, however, gripped with fear during the time and did not know what to say. The appellant thereafter opened the door and let her out of the office.

She did not tell anyone at the hostel about what had happened because she thought nobody would believe her. The appellant was well respected by all the schoolchildren. Later that day the appellant met her at about 5.00 pm at the dining hall where she had gone for supper. He called her outside the dining hall and told her that he had a meeting at the Ambassador Hotel, Harare, on 30 July. He asked her to meet him there. His exact words were: “Let’s meet at the Ambassador Hotel so that we can have some fun outside school”. She told him that she was going to be present even though she had no intention of going, and did not go, there. She again did not tell anyone about this incident, again because she believed no-one would believe her and because the proposed meeting at the hotel would be after the schools were closed. The appellant was an “elderly” person who ran the school.

What eventually got the third complainant to report the above incident was because the sixth complainant one day came into the hostel crying and alleging that the appellant had had sexual relations with her. In the event, all the girls, that is Upper and Lower Sixth girls (about eighty in all), met in the drying room to discuss the matter. Other girls, including the first complainant, also related how they were treated by the appellant. The sixth complainant was still crying whilst this was going on. One Joyline also told the group that the appellant had raped her. The latter told all the girls to be free to talk about their experiences with the appellant. After the others had spoken, it occurred to the third complainant that she was not the only person who had been treated in that manner by the appellant. She and all the others who had been harmed by the appellant put their names on the list and a summary of what happened to each one of them. Thereafter they decided to stage a strike or demonstration. The next day the Lower Sixth students left the school and went to the Regional Office of the Ministry of Education in town. There the Acting Regional Director of Education addressed them. After that they went back to school.

The third complainant was adamant that the appellant had assaulted her in the manner described above. She denied that she manufactured the allegations after the demonstration and stated that the demonstration was staged because of the assaults. They could not have had the zeal to stage a demonstration if nothing had happened because they were aware that generally demonstrations led to expulsions from school. She denied that the allegations were false and that she colluded with the other complainants to make them. She, at the time, did not have a grudge or bad feelings against the appellant and in the circumstances there was no reason for her to concoct allegations against him.

The third complainant maintained the above during cross-examination. She explained that she thought nobody would believe her story because it was not heard of, that is, a teacher treating a student in that manner. She stated that all the other complainants were not her friends but were just schoolmates. In connection with the sixth complainant, she said she thought the incident occurred on the day she related it to them because the sixth complainant was crying whilst she was telling it. She denied that she and the other complainants were lying about the matter and stated that there would be no point in lying about a matter that would involve them being shamed also - allegations of sexual assaults and rape involve shame on the complainants.

The allegation in Count Four was to the effect that the appellant unlawfully and indecently assaulted the complainant in that count ("the fourth complainant") by slapping her on the buttocks with his right hand. The fourth complainant was also a student at the school at the relevant time. According to her, some time in August 1991 she went to the school to collect her Form Four results. Upon arrival she proceeded to the classrooms. Whilst she was in one of the classrooms she observed the appellant going to his office. Shortly after that he left the office and proceeded to the classroom where she was. She left the classroom and greeted him. The appellant then congratulated her for having done well in the examinations. He then asked her to follow him to his office to retrieve the results. She took the student route to the office while the appellant used a shorter route. She found the appellant already at the office. He was standing behind his office desk and detaching her results from a sheet a paper. He then asked her what she intended to do

seeing that she had passed. She told him that she intended to return to the school to do Form Five. She was also standing up at the time but was in front of the desk.

After detaching the examination slip, the appellant held it and said to her in English: “Can I spend the day with you?”. He added that he would drive her home afterwards. The fourth complainant declined, saying that was impossible. He thereafter moved from the side of the desk where he was and proceeded to where she was. And then he handed the examination slip to her. She thereafter started to walk out of the office. The door was partially closed and she had to open it wide enough for her to pass through. As she was opening it the appellant, who was behind her, hit her buttocks with one of his hands. She later explained that it was a sort of slap or pat on the buttocks, rather like “someone was trying to involve himself in an act of play by touching my buttocks ... or he was rather teasing me ...”. She said in English: “I think he patted my buttocks”. This she said upset her very much. She did not expect the appellant to behave in that manner. Being a headmaster she regarded him as a father or brother and did not suspect that he would behave in that manner towards her. She also felt humiliated by his action. She did not say anything to the appellant at the time because, being upset as she was, she thought she might say bad things and use vulgar language.

Thereafter the fourth complainant left the office and proceeded to the classroom where she had left her books. She did not report the matter to anyone because she did not have a close female friend at the time and her parents would have been upset by it. She also did not report to the other teachers because the appellant was their superior. They were more likely to accuse her of ill-feeling towards the

appellant. She eventually related this matter to the rest of the students at the gathering mentioned by the third complainant above. Some of the girls laughed at first and one of them, Julia, advised her not to take it further or forget about it because it had occurred some time back. It was at the time that the sixth complainant was crying whilst she was relating her story. At the meeting they resolved to tell their parents about the allegations and to stage a demonstration. They decided not to tell the school administration and the teachers because they were the appellant's subordinates. The fourth complainant also took part in the demonstration.

The fourth complainant was adamant that the appellant patted her on the buttocks. She denied that she conspired with the other complainants to level false allegations against the appellant.

Under cross-examination the fourth complainant stated that the examination results were with the appellant and not with the receptionist. She was adamant that the appellant was the person who gave her the results in his office on the day in question. It was put to her that it was the receptionist who asked her to go and see the appellant at his office because the appellant had given instructions to the effect that all the students who passed well should be asked to see him. She denied this and maintained that it was the appellant himself who invited her to his office. She was also adamant that she found him standing behind his desk and that the office door was slightly open and she increased the gap to let herself into the office. It was put to her that the appellant placed his hands on her shoulders in a fatherly manner to congratulate her for having done well. She denied it and said he had congratulated her earlier in the classrooms when he held her hand, saying "well done, my child, you

did well". She was also adamant that her allegations were not intended to justify her taking part in the demonstration. She added that there was no reason why she would falsely incriminate or do something against the appellant as she had nothing against him. She took part in the demonstration because she knew she was wronged.

The allegations in Count Six were that on 8 November 1992 the appellant unlawfully and intentionally had sexual intercourse with the complainant in that count ("the sixth complainant"). The sixth complainant's evidence was to the effect that she was also a student at the school at the relevant time. At about 9.15 am on that day one Chipu Chikowore ("Chipu") came to her room to deliver a message that she was wanted at the headmaster's (the appellant's) house. It was said that he had a telephone message for her from her father. Chipu used to live at the appellant's house. After tidying up her room and dressing properly, the sixth complainant asked a friend, the first complainant, to accompany her to the appellant's house. She agreed.

When they got to the front door they knocked and Chipu answered. She left them by the door and went to call the appellant. He came and asked them to come into the house. They went in and sat on one sofa whilst the appellant sat on the other one. He told them that the message for the sixth complainant was to the effect that her father had asked the appellant to reserve a place for the sixth complainant for Lower Sixth at the school for the next year. After that there was a general discussion about various matters. As the first complainant was related to the appellant they talked a lot and they discussed the literature examination the first complainant had

written a few days before. He also told them he was marking the examination papers for his wife who had gone to Inyanga for a seminar.

After about five to six minutes the appellant asked the first complainant to go to the hostel to collect a certain literature textbook. At first she protested, saying that the appellant's wife must have all the textbooks because she was a literature teacher. He told her that she did not have the book he wanted and insisted that the first complainant go and collect it. She reluctantly went.

This left the appellant and the sixth complainant alone in the house because at the time he asked the two girls to come into the house he asked his children to go and play outside. There were his two sons and Chipu at the house.

Just before the first complainant left, the appellant asked the sixth complainant to write down the details of her examination results. To do that she went to a table by the front door whilst he was standing up. Whilst she was writing he went and closed the door, that is, after the first complainant had got out of the house. He then went behind the chair on which the sixth complainant was seated and pulled it. This caused her to fall down on the floor. Her right hand touched the floor first as she was struggling to find her balance. She ended lying on her back with her right hand underneath her body. Only her left hand was free. The next thing she knew was that the appellant got her left hand to cover her mouth. This was most probably intended to stop her from screaming because just before that she had shouted out "No!". Thereafter the appellant got on top of her and she became helpless. She

nevertheless struggled to free herself. There was then nobody in the house but she kept on struggling, hoping to free herself somehow.

When she landed on the floor her legs were spread out. She was at the time wearing her school uniform - a skirt, white shirt, a pair of socks and sandak shoes. The appellant was wearing a navy blue dressing gown at the time. During the struggle the appellant took out his penis and put it into the sixth complainant's vagina. She felt pain from her vagina which must have been caused by the penis which penetrated her vagina. Her skirt was up at the time and he had pulled down her underpants to her knees. He must have done all that with his free hand. Later when she stood up she felt something which she saw was a cloudy white sticky liquid flowing down from her vagina. Some of the stuff went onto her skirt.

The sixth complainant went on to explain that whilst she was struggling she heard a knock on the front door. It was more like banging than just ordinary knocking. It was also like the person was trying to open the door which was apparently locked. At the time of this knocking the appellant was still on top of her and she thought that would make him leave her. He, however, continued with his actions. He left on his own accord after some time and went into an inner room. From there he brought some tissue paper, threw it at the sixth complainant and asked her to go to the toilet to wipe herself. He then went to open the door. The sixth complainant was still lying on the floor when he threw the tissues at her because she felt weak. She could not at that stage get up to run. She was still shaken. She eventually went to the toilet and there wiped herself. After that she went to collect her sandak shoes which were in the sitting room. She found that the first complainant

had returned. She then just asked her that they leave the house there and then and they left. The appellant was also in that room at the time.

The sixth complainant did not tell the first complainant what actually happened although the latter kept on asking what had happened, having sensed that something must have gone wrong. She kept on telling her that they should leave. She was still in shock and did not know how to tell her. At the hostel they looked for Julia. They eventually found her in the laundry room. They took her outside and there the sixth complainant told the first complainant and Julia what had happened. Julia looked shocked and they were all confused as to what to do. Julia then told the sixth complainant to go and wash and that perhaps she would feel better after that. She did that. After that shower she washed all her clothes - the incident occurred on a Sunday which was a laundry day at the school. The whitish stains on her skirt, however, still remained. After the washing the three girls discussed the matter and in particular as to who they would tell next. They decided not to report the incident to the teachers because they thought they would not take the matter any further as they were all the appellant's subordinates. They thought a better idea would occur to them later.

The sixth complainant was at the time confused but hoped some idea would reveal itself to her. Such a thing had never happened to her before. Later it occurred to them that they could tell the incident to Julia's and the first complainant's parents because they used to come to the school often. That very evening (the Sunday) the parents did come but they didn't get to the hostel. They stopped their motor vehicle near the appellant's house and later went away. The girls were not

allowed on a Sunday to leave the hostel, with the result that they could not relate the incident to the parents. As Julia was ill at the time, the girls decided to send a message to the parents notifying them of that. They hoped that the parents would come straight away to see Julia but they only came on the Thursday.

When the parents arrived at the school they stopped their motor vehicle near the appellant's house and went into his house. The girls went to the motor vehicle and waited for the parents there. When they came out of the house the girls took the mother aside and told her about the incident. At first the mother did not say anything but she thereafter asked two questions; firstly whether the sixth complainant had reported the incident to any member of the staff, and secondly whether she had reported the incident to her parents. She answered no to both questions. The sixth complainant did not explain why she had not done so. She explained that even if she could have written to her parents she would not have known how to put the incident to them. She never came into contact with the appellant after the incident.

The sixth complainant took part in the demonstration. She stated that before the demonstration and about a week after the incident occurred she and the first complainant went to the first complainant's home, ostensibly to see the mother who was ill. But the sixth complainant wanted to get some advice on how she could relate the incident to her parents. They stayed there overnight. The mother was so ill that she could not talk. In the result, the sixth complainant decided to approach the father of the first complainant with her problem - she told him about the incident. Although he listened sympathetically, he told her that he could not advise her except to say that she should tell the authorities. She had already decided she could not do

that and was therefore not satisfied with the advice. The girls therefore went back to school with nothing achieved.

The next day, a Sunday, the sixth complainant felt depressed. She did not watch television with the others but instead went to her room and lay on her bed. Thereafter she just started crying because it was too much for her to take. A friend, Joyline Boora (“Joyline”), came into the room with the intention of borrowing something from her. Joyline asked the sixth complainant why she was crying. At first she couldn’t get herself to tell her the reason but she in the end gathered up her courage and told her about the encounter with the appellant. Before she related the encounter a roommate, one Madzudzo, came into the room. The two listened as she was relating the encounter. Whilst she was relating the incident Joyline started to cry also. This confused the sixth complainant and Madzudzo because they did not know whether Joyline was crying for the sixth complainant. However, a few minutes later Joyline told her the same thing happened to her, that she was raped as well by the appellant. Madzudzo thereafter tried to comfort the two of them. Madzudzo later went out to call a few people to come and comfort them. A group of people later gathered in the room and some of them related similar incidents which they alleged had happened to them and that the appellant was the culprit. Because so many people gathered they decided to go into the drying room where nobody (officials) would notice that something was going on. The allegations of sexual assaults against the appellant were related and discussed. In the end it was agreed that all the complainants would give their names to Joyline. The sixth complainant put her name down. After further discussion it was decided that if they took the matter to the administration the appellant would have the last say in the matter and it would not see

the light of day. And that the best course to take would be to stage a demonstration at the Regional Director's office. The demonstration was therefore arranged for the next morning, a Monday.

The sixth complainant stated that she had never had sexual intercourse before her encounter with the appellant. And she denied that she consented to the sexual intercourse. She also stated that she also bled after the incident. She denied that on the day of the encounter with the appellant, she met one Tried Jokonya at the appellant's house. She denied that it was the first complainant who had arranged that the two of them should go to the appellant's house on the day in question and maintained that she asked the first complainant to accompany her to the house. She denied that on the day in question the appellant and the first complainant discussed a problem which the first complainant had with a boy called Onesimo and maintained that the discussion only centred on the examination the first complainant had written and the sixth complainant's examination results. The sixth complainant denied that as they (the first and sixth complainants) were about to leave, the appellant went to have a bath and thereafter went with his two sons to town, leaving the two of them at the house. She also denied that she prepared tea in the house and thereafter watched some video clips up to lunchtime.

It was also put to the sixth complainant that the appellant would say he could not possibly have raped her because at the relevant time there was the said Tried Jokonya, Chipo and his two sons at the house. She maintained that when they got into the house he asked Chipo and the two sons to leave and that they left. She did not see Tried Jokonya at the house. After the incident the sixth complainant did

send for her once but she refused to go to his house. Later in the afternoon of the day in question the first complainant informed her that she too had been sexually assaulted on two occasions by the appellant at his house. It was the first time she had told her about the matter.

The sixth complainant was taken to hospital by the police much later for examination. She stated that before the incident she treated and respected the appellant simply as a headmaster. She denied that she fabricated the allegation at the meeting in the drying room with the other girls. She said she had nothing against the appellant and was actually grateful because he was going to find her a place for Lower Sixth the next year at the school and had kindly allowed her to repeat Form Four. She therefore had neither grudge nor hatred against him.

Under cross-examination the sixth complainant maintained all the above. She denied that she and the first complainant discussed the demonstration at the house of the first complainant's parents. And she denied that she was now sticking by her story because of the demonstration. She stated that she demonstrated because she thought that that was the only way she could put the incident to the public and her parents. She did not want the same thing to happen to other people.

In connection with the seventh count, it was alleged that on 13 November 1992 the appellant unlawfully and intentionally attempted to have sexual intercourse with the complainant in that count ("the seventh complainant") without her consent. She was also a student at the school at the relevant period. According to her, on the day in question, 13 November 1992, she was in the hostel

when she was summoned downstairs where it was said that the headmaster (the appellant) wanted to see her. It was around 10.00 pm. When she got downstairs she saw the appellant who told her that there was a telephone call for her from Harare at his house. They then walked towards the house for the telephone call. Whilst they were walking they reached a junction where one road branched to the classroom blocks and the other to the appellant's house. The appellant instead got them to take the classroom blocks road. When they got to the library he asked her if she could keep a secret. Before he told her the secret he grabbed her shoulders and then started trying to kiss her. She thereafter struggled with him. They struggled for some time but he managed to cause her to fall down. Before she fell down the appellant told her that the secret he meant to tell her was that he loved her. She told him not to say shocking things like that.

After the seventh complainant fell down, they continued to struggle. She fell facing upwards. The appellant was on top of her. He somehow managed to get his hand underneath her skirt through the waistline band and then parted her underpants and started touching her private parts forcefully. He was also trying to prize her legs apart with his legs by putting his legs between hers. As he was doing that he was also trying to kiss her but she had gritted her teeth. Although his mouth came into contact with hers his tongue did not get through. He was, however, too powerful for her and was beginning to overpower her. She started crying softly and he released her. She stood up and he asked her to keep the incident to herself and not tell anyone. She thereafter went back to the hostel and he just walked away.

At the hostel that night she told her friend, one Sandra Keta, what happened. She did not tell any other person about the incident. She explained that the incident occurred at the library wall and that at the time there were no people in the library and the lights were off. It is not open after 10.00 pm. She explained that she did not shout for help because it was going to be embarrassing. She did not want to attract students, some of them boys. She did not want to face a whole group of people in that state. Asked by the court what she considered the appellant was about to do during the struggle, she stated that he wanted to kiss her and also to rape her because he was putting his hand into her private parts. According to her, if someone touches one's private parts he is leading to sexual intercourse. The kissing, the touching of private parts and the prising open of the legs indicate intention to have sexual intercourse.

On 22 November 1992 some girls knocked at her door and called her to a meeting to discuss what the appellant had been doing to some female students. When she got there she heard other students, and she remembers Joyline in particular, relating how they were abused by the appellant. Joyline then asked that those who had been abused write their names down. The atmosphere in the room was tense. The seventh complainant's name was also written down. She also observed that the sixth complainant's name had been written down as a victim. The sixth complainant, who was also in the room, looked miserable. According to the seventh complainant, she had observed some days before that the sixth complainant was not her usual self.

After a list had been compiled, it was decided that there was going to be a demonstration the next day. The seventh complainant did not take part in the demonstration because she was writing examinations on the day it took place.

It was put to the seventh complainant that the appellant would say that after he received a telephone message he gave her the message and thereafter left her at the hostel. She denied that and maintained that they left the hostel together. She denied that she was related either to the sixth complainant or to the first complainant and also denied that she was just joining the first and sixth complainants in making false reports against the appellant.

Under cross-examination the seventh complainant maintained the above, but stated that she could not remember which of the girls brought her the message that the headmaster (the appellant) wanted her downstairs on the day in question. The appellant, on seeing her, told her that the telephone call was from Harare but said he did not know who was telephoning because he was not the person who had received it. She denied that he had told her that the call came from her brother. She wondered why anyone would call her at about 10.00 pm. She denied that the appellant had told her that the call was urgent, that was why he came at that time of the night to the hostel. She also denied that the appellant just gave her the message that there was a call and that she should get it at 8.00 am the next morning. The seventh complainant through photographs indicated the path they took that night - it led to the classrooms. She stated that the appellant led the way but they were about side by side. While walking they were talking about general things. She

stated that she did not herself turn into the proper path leading to the appellant's house because the appellant was the one leading. She was following him.

It was put to the seventh complainant that the appellant would say that there were people in the library on the night in question. She stated that there couldn't have been people there because the library lights were off. Study time in any event ended at 9.00 pm. The boys use the library to study. In connection with her fall to the ground, the seventh complainant stated that she thought that the appellant felled her with his legs. She stated that she could not explain exactly what happened but she just found herself on the ground, on her back and the appellant on top of her. She was wearing a maroon school skirt and a shirt and the shirt was not tucked into the skirt. She did not know which of the appellant's hands was pressing her down but she couldn't get up and she was trying to push him off her. She maintained that he managed to touch her private parts after prising her legs apart. At the time she realised that she was losing her strength to resist. She did not cry aloud but just sobbed. She maintained that she did not scream because she was worried about being embarrassed. Screams would have brought out boys and girls at the school and the area where the incident happened is near to the boys' hostel.

She stated that she did not report the matter to the school authorities because she was too embarrassed to do so and also because the appellant was the head of the school. She could only relate the encounter to her friend. She stated that her friend Sandra was shocked when she related the encounter. She tried to console her and advised that she should tell her parents about the encounter. She did not write to

her parents about the matter because she wanted to tell them personally. She admitted that she was friendly to Joyline and Sandra.

Sandra Keta ("Sandra") also gave evidence for the State. She was also a student at the school at the relevant period. She stated that one day in December 1992, while studying in her room with other girls, the seventh complainant came and told her that she wanted to see her. She didn't enter the room but spoke whilst standing at the door. Sandra left the room and they went to talk in the corridor. There the seventh complainant told her that something shocking had happened to her. Then she started to cry and was in a state of shock. On that day the seventh complainant couldn't get herself to say what happened. All she said was that she had been called by the appellant for a telephone call. Sandra thought that she must have received bad news. She asked the seventh complainant to tell her mother about whatever it was because she knew they were very close. Later Sandra emphasised that as the seventh complainant was about to tell her what happened she broke down and began to cry and that she was shaking and shivering. Sandra admitted that she and the seventh complainant were friends.

Sandra got to know the full story when the girls were discussing allegations of sexual abuse against some of the girls by the appellant. All the girls were called into the drying room then. Sandra got there late and found Joyline talking. She was complaining about sexual abuse by the appellant. Thereafter other girls also related their sexual encounters with the appellant. The seventh complainant was one of the girls who did so. Sandra did not take part in the demonstration because she was writing an examination on the day of the demonstration.

Under cross-examination Sandra maintained what is stated above. She maintained that because of her state the seventh complainant did not reveal what had happened to her exactly - she tried to say something but that is when she broke down and cried and she was in a state of shock. The seventh complainant was very low and it appeared she had gone through something terrible. Sandra did not tell the other girls about the matter because the seventh complainant had told her she was going to tell her the full story later and also because it appeared she wanted the matter to be a secret between them. Sandra and the seventh complainant never got the chance to talk again.

Sandra admitted that the sixth complainant did come into her room the night before the demonstration crying. Sandra was studying with one Catherine Matandiwa. The sixth complainant spoke to Sandra in the presence of Catherine and alleged that she had been raped by the appellant at the latter's house. Sandra stated that the sixth complainant stated that she had been raped in the bedroom. She wanted advice on the matter and they told her to go and report the matter to her mother. Sandra did not question the sixth complainant further because she was crying and was distressed. Sandra explained that the sixth complainant told them that she had gone to the appellant's house with the first complainant and that the first complainant was thereafter sent by the appellant to go and collect a book, leaving the sixth complainant and the appellant alone in his house. And that was when he raped her.

Sandra denied that she played any rôle in organising the girls' meeting. According to her, it was Joyline who called everyone to the meeting. Sandra could

not give a reason as to why Joyline was taking the lead. She, however, considered Joyline to have been brave and very strong in character. She admitted that Joyline had influence amongst the girls and was friendly to her and Catherine. Sandra admitted that the seventh complainant could also have been classed as her friend but not the third and fourth complainants.

Julia gave evidence for the State. She is the sister of the first complainant and the appellant was therefore her uncle. She had been a student at the school but at the relevant period was waiting for her results. She stated that during the April school holidays the first complainant told her and their cousin Lydia that the appellant had examined her in the manner alleged, that is, inserting his fingers in her private parts, to find out if she was a virgin. They were then at home. The incident took place at the appellant's home. Julia asked why she had kept the matter to herself and her reply was that she thought that everybody was aware of it. She could not assist the first complainant about the matter.

Julia went back to school in May for the second term. She had by then started her Lower Sixth Form. She knew the sixth complainant. Julia stated that some time in November 1992 the sixth complainant came together with the first complainant to see her. The sixth complainant was crying. Julia asked her what was wrong and the sixth complainant's reply was that the appellant had raped her and that she wanted some advice. Julia couldn't help her because the appellant was her uncle. All Julia told the sixth complainant to do was to have a bath because she told her she felt unclean. The sixth complainant did not go into details about the matter. Julia was scared to tell the sixth complainant to go and report the matter to the police

because she thought she would be betraying her uncle. In the end, Julia told the sixth complainant she would call her (Julia's) mother to see if she could assist.

Later, after she had seen that the appellant had left the school in his motor vehicle, the three girls, that is Julia, the first complainant and the sixth complainant, went to his house. They found Chipo and the housegirl there. There they used the appellant's telephone to call Julia's mother but they found her not at home. They left a message to the effect that Julia was sick and that she (the mother) should come to see her at the school. The mother came that day but they could not get to talk to her. This was because when the mother came she went to the appellant's house. The appellant was at the time there but they wanted to speak to her alone. At a later date they managed to speak to the mother. This time the mother came with the father. They got an opportunity to speak to her alone whilst the father was talking to the appellant - Julia first related the incident to her mother and the sixth complainant explained the incident to her. The mother's reaction was that the sixth complainant should have made a report to one of the teachers on duty and that she (the mother) could not help her much.

The next weekend the sixth complainant went to Julia's home with the first complainant. When they came back the sixth complainant was still crying. Julia asked what happened. And the reply was that the sixth complainant had not been given much advice on how she should approach her parents on the matter. The sixth complainant spent the whole day crying. Later that night Julia heard girls knocking on doors and calling other girls for a meeting. Julia woke up the first complainant who was asleep and they went to the drying room where some girls had

assembled. Joyline was the main speaker. She explained that the appellant had raped the sixth complainant and wanted to know if something like that had happened to other girls. All the girls were shocked. The first complainant also spoke, urging all girls who were victims to own up, and then started crying. Julia took the first complainant to her (Julia's) bedroom. Later Julia heard that other girls had put their names on a list of persons who had been abused by the appellant. The meeting decided that the following morning there would be a demonstration so that the Regional Director of Education would know what was happening at the school. The demonstration did take place the following morning and Julia took part. Julia denied that the girls conspired to make false allegations against the appellant. She stated that the appellant was at the time not hated by anyone so they would not have conspired against him.

Julia denied any knowledge of an incident when her mother and the appellant warned the first complainant about her behaviour with boys.

Julia also stated that some time in the third term the fifth complainant found her on the girls' hostel verandah with one Dorothy Nyangani and some other girls. The fifth complainant then told them that the appellant had slapped her on her buttocks when she had gone into his office to collect her 'O' Level results. After she said that, Julia, Dorothy and other girls laughed and told her to forget about it. The reason why Julia reacted that way was because the appellant was her uncle and she had to defend him. She did not want the whole school to know about it.

Julia denied that the reason why a report was made to the police in this matter was because the mother was upset about James' (brother to Julia) treatment by the appellant after he assaulted one of her (Julia's) boyfriends. She also denied that the boy who was assaulted was her boyfriend. She stated that the boy had quarreled with her and had used abusive language about her mother. Julia denied that her parents had anything against the appellant and that they were therefore behind these matters. According to her, the girls got together on their own on the matters.

Under cross-examination Julia maintained the above. She stated that she had not heard any bad reports about the first complainant's behaviour at school and their mother had not raised any concern about her behaviour. She admitted that some time at their home the appellant did jokingly tell them, that is, the mother, the first complainant, Lydia and herself, that he used to be able to tell whether a girl was a virgin or not by putting a string around her neck. He also at the same time told them about boys' behaviour towards girls. She denied that that had anything to do with either the first complainant's or her behaviour. She also denied that he was then counselling them at the request of their mother.

On what led to the first complainant being beaten by their father, Julia stated that the reasons were that the first complainant was going about telling people that her parents hated her and because the first complainant had talked to the boy Julia had quarreled with after the quarrel. At the time he beat her the father did not know of the first complainant's allegations of sexual assault by the appellant. Julia could not remember whether at that time the sixth complainant had spoken to the mother about her allegations of rape by the appellant.

Dorothy Nyangoni (“Dorothy”) also gave evidence for the State. She too was a student at the school during the relevant period. The fourth complainant was her friend at the school. According to Dorothy, one day during the third term of 1992, whilst they were at the school hostel, the fourth complainant told her that when she was doing Form Four in 1991 she went to the appellant’s office to collect her June ‘O’ Level results. And when she was about to leave the office the appellant touched her buttocks. Dorothy told her to forget the matter because it had happened almost a year before. The fourth complainant looked upset when she told her the allegations. Dorothy could not remember what brought up the subject.

Dorothy was aware of the demonstration which took place at the school in November 1992. According to her, on 23 November 1992 she went into the drying room and there saw the sixth complainant crying and saying that the appellant had raped her. Dorothy had gone into the drying room to check on her washing. There were many girls in the room and they were around the sixth complainant. Whilst in the room Dorothy also gathered that another girl, Joyline, was also raped by the appellant. Joyline later announced to the girls who were gathered in the room that if there was any girl who had been raped or sexually assaulted by the appellant they should go to her room and write down their names. She told them not to be afraid. The first complainant, who was also crying, made allegations of sexual abuse by the appellant. Most of the girls, including Dorothy, went to Joyline’s room. And there all the complainants in this case made allegations against the appellant. The girls then decided to demonstrate the next day. Dorothy took part in the demonstration because she felt that what happened to the complainants could have also happened to her.

Dorothy maintained the above during cross-examination.

One Jesca Masimbira (“Jesca”) also gave evidence for the State. She was friendly to both the first and sixth complainants. Most of her evidence related to the alleged incident of attempted rape by the appellant against the first complainant on which the appellant was acquitted. The relevant evidence by Jesca was that concerning the demonstration. According to her, the evening before the demonstration girls got together because of the sixth complainant’s allegations of rape. She was crying at the time and Joyline was trying to comfort her. The girls gathered in the drying room. Joyline asked that anyone who was a victim should come forward and give her name to her. Whilst they were there the first complainant also made allegations of sexual assault by the appellant and also started to cry. The girls then gave each other ideas and they came up with the idea of a demonstration. Jesca took part in the demonstration the next day. She was hurt because of what had been done to her friend. Jesca denied that the demonstration went ahead because of the promptings of the first and sixth complainants. She stated that the reason was because of the appellant’s actions which appalled everyone. She denied that the allegations against the appellant were fabricated and trumped up during the meeting in the drying room.

Under cross-examination Jesca denied that she was testifying to untruths in order to support her friend, the first complainant.

A medical report compiled on the sixth complainant was produced. The examination was done on 4 December 1992. It indicated that one finger could be

inserted into the vagina and that “penetration may have been effected”. There is also an indication that the sixth complainant did not have a history of sexual exposure before. The doctor who examined the sixth complainant could not be called to give evidence because he had left the country. He had been working in Zimbabwe as an expatriate doctor.

The appellant gave evidence in his defence. In connection with Count One he confirmed that the first complainant was his niece. And that his relations with her family were excellent. He stated that the first complainant joined the school in 1992 on transfer from Roosevelt High School. Her father had approached him (the appellant), requesting that the first complainant be transferred to the school. The appellant went on to say that prior to 8 February 1992 the first complainant’s mother approached him and his wife with concern about the first complainant’s behaviour. She was concerned that the first complainant, who had joined the school only in January, had already gained herself a reputation with boys. She implored the appellant’s wife to sit down with the first complainant and counsel her on the matter. She stated that she would like the first complainant to follow her example of remaining a virgin until she got married. The appellant assured the mother that he would call the first complainant and address her on the matter.

On 8 February 1992, at about 7.00 am, the appellant met the first complainant at the school’s sports field. He asked her to come to his house in the afternoon. He denied that he sent Kudzi (“Kudzi”, the appellant’s son) to call her. When the first complainant later called at the house the appellant’s wife was present. They all went to sit in the lounge. And there the appellant proceeded to tell the first

complainant about her mother's concern and in particular that she was involved with a boy called Stephen Mvura. The first complainant denied that and told them that the allegations by her parents did not surprise her because they always thought that about her because they hated her and showed preference for her elder sister Julia. He assured her that her parents had the best intentions for her. Thereafter he asked whether she was a virgin. She assured him that she was. And he told her that he would go and reassure her mother that there was no substance in the allegations she had voiced to them. Thereafter the first complainant left for the hostel.

The appellant explained that whilst he and his wife were talking to the first complainant in the lounge his two children, boys aged nine and six years, were playing around the house. In addition two other persons, namely his sister-in-law Chipu Chikowore aged thirteen years and a maid whose name he had forgotten, were also in the house. He denied the first complainant's allegation that his wife left the house some five minutes after the first complainant got to the house. He explained that his wife would not have left because she knew the reason why the first complainant had come to the house. He also denied the first complainant's allegation that he called her to the bedroom and that there he physically examined her by inserting his fingers into her vagina. He added that he was shocked to hear those allegations.

The appellant stated that he only got to know of the above allegations at the *dare* in Highlands. He had been summoned there by his uncle, Edward, who sent the appellant's cousin Ashbi. Ashbi and one Sipamba took him to the Highlands *dare* following the demonstration by the students. He confirmed that the persons

already mentioned above were at the *dare*. There the above allegation by the first complainant was put to him by Edward, who added that it had also been alleged that he had already admitted that the allegation was true. This took the appellant by surprise and he was dumbfounded. Edward added that that why there was a demonstration where he saw girls carrying posters against the appellant. All this caused the appellant to cry. He couldn't believe that anyone could put forward such an allegation against him. After he recovered he told the people in the room that there was no truth whatsoever in all those allegations. He also denied that he had admitted the allegation by the first complainant. He went on to explain that the first complainant's father had never confronted him about the matter but that all they had talked about was James' assault of boys at the school. He went on to state that prior to that the first complainant's father and mother had visited his house and showed him letters complaining about the behaviour of their girls, Julia and the first complainant, with boys. He had confronted the girls and they denied it.

The appellant then went on to talk about the incident when the first complainant came with the sixth complainant to his house. This is the incident which forms the basis of the sixth count. According to him, the two girls came to his house at about 9.00 am on Sunday, 8 November 1992. They found him still asleep and Kudzi came into his bedroom to tell him about the arrival of the first complainant. He told Kudzi to ask her to come to his bedroom, but to his surprise she came with the sixth complainant. He asked them to sit down. The first complainant sat on the side of his bed and the sixth complainant on a small stool. The first complainant then told him that she was in big trouble. She went on to explain that one Jenny and her friend were jeering at her because they said one Onesimo had jilted her (the first

complainant) for Jenny. He told her that that was silly matter to worry about because Onesimo was not the last boy in the world. They discussed the matter for about an hour and then he told them to leave because he wanted to have a bath and thereafter go into town.

As they were leaving the bedroom the appellant reminded the first complainant to bring him a literature textbook she had earlier promised to bring him. His wife was at the time in Inyanga on examinations business. After they left he went to take a bath. Whilst he was bathing he heard Kudzi say that there were no tissues in the toilet and that the first complainant wanted to use tissues. He then realised that the first complainant was still around the house. He gave some tissues and after that dressed himself. When he got out of the bath he found the first and sixth complainants in the kitchen. They were with Chipo and one Tried Jokonya, a new maid, and were preparing some food for themselves.

The appellant denied the sixth complainant's allegation that they found him in the lounge and not in the bedroom. He maintained that they found him sleeping. He added that Chipo, Tried Jokonya and his two children were there. He also denied the sixth complainant's allegation that he, on that day, sent for her and stated that it was the first complainant who brought her to his house. The appellant also denied that he sent the first complainant to the hostel to fetch a book for him. He also denied any knowledge as to whether the door of the kitchen was closed or open at the time, insisting that he was in the bedroom. The appellant denied that he had sexual intercourse with the sixth complainant. He denied the allegations that before he had sexual intercourse with her he pulled the chair she was sitting on, causing her

to fall to the floor. According to him, she lied and concocted the events. He added that if what she described had happened she would have been hurt. He denied that he pulled down her pants to some level and thereafter inserted his penis into her vagina. He further denied that after he had sexual intercourse with her he went to the toilet and wiped himself with tissues and later also instructed her to wash herself in the toilet. He also denied the allegations in connection with the banging on the locked door. The appellant also added that all the evidence given by the sixth complainant was a fabrication instigated at the first complainant's parents' house.

The appellant explained that when the two girls came into his bedroom they found him wrapped in his dressing gown, which was green in colour and had a design of interlocking chains. He was inside his blankets and he propped himself up against the headboard with a pillow when they came in. He went on to say that after the Sunday visit the girls visited him again on the Wednesday and this time the first complainant told him that things had settled down in the hostels. That day the sixth complainant gave him details of her "O" Level passes from the previous year (1991) with a view to combining them with what she would achieve in 1992 to enable her to proceed to Lower Sixth the next year. Her father had earlier been to the school and had requested that the sixth complainant be allowed to proceed to Lower Sixth. That day the two girls found him dressed normally and seated on a sofa in the lounge. They also sat on the sofas. And when the sixth complainant was writing the details of her results she sat on a chair at the table. The first complainant remained sitting on the sofa. On that day Tried and Chipu were in the house. The children were still at school.

The appellant went on to say that during the course of the week he had to deal with the problem of James assaulting boys at the school. He spoke to the father about it and told him that he disapproved of James' action. On 11 November 1992 the father came to the school in an angry mood, protesting about the fact that James had been reported to the police. The father ignored the appellant and went to see the deputy headmaster, who was at the time the acting headmaster. Later the appellant drove to the father's house. He found the father and his wife seated outside under a tree having tea. He went to where they were and tried to explain the school's actions on James. The father would not hear of it and tried to justify the actions of James. The appellant also told him that the hostel teachers were the persons who had reported the matter to the police. The father had alleged that the appellant was instrumental in making the report. After they had talked at length about James, the father asked the appellant if his (the father's) wife had ever sent him to "*kutarisa*" (examine, look after) the first complainant. The appellant understood the question to mean that he had been asked to "look after or counsel" the first complainant. He agreed and said that the father's wife had in February 1992 asked him to counsel the first complainant. He then advised the father not to be harsh towards his girls and that he should treat them equally so as to avoid the first complainant thinking that her parents hated her. The father did not respond. The appellant was offered a cup of tea. After he drank it he left. He left with the feeling that the two were angered by the fact that their son had been reported to the police and that they thought he (the appellant) was to blame for that.

The appellant denied that at the meeting with the father the latter alleged that he had inserted his fingers into the first complainant's vagina. He

maintained that all he was asked was whether he had been instructed by the mother “*kutarisa mwana*”, which he understood to mean to “look after, or care for, the child”. He did not understand it to mean “to examine the child”. It never crossed his mind that the father might have been talking about a physical examination of the first complainant. He added that if the father had made that kind of allegation he would have denied it. He went on to say that he was later telephoned by his uncle, Edward, to the effect that the father was making allegations against him similar to those being made by the demonstrators. After that they sent somebody to take him to Highlands for the *dare*.

The appellant admitted that the father’s mother was present at the *dare*. He stated that she did not make any significant contribution to the discussion. He also stated that all the *dare* resolved was that the father should be told about the appellant’s reaction to the first complainant’s allegation. The demonstration and the sixth complainant’s allegations were not discussed at the *dare* - the only matter was the alleged physical examination of the first complainant.

In connection with Count Three the appellant stated that the third complainant’s allegations were made up in order to support her taking part in the demonstration and to give support and credence to the stories of the other complainants. He denied that he was using the office mentioned during the period mentioned by the third complainant (July 1992) - he had vacated it at the end of June 1992. He, however, conceded that one day, either in May or June 1992, the third complainant came into his office and informed him that she had problems with her

school fees following soured relations between her parents. She wanted addresses of organisations which could assist her. He gave her a number of addresses.

The appellant denied having placed his hands on her buttocks at the time or at any other time. He stated that at the time he was sitting in a chair behind his desk and she was seated in a chair in front of the desk. He admitted that he talked to her about her bad pimples and advised that she should consult the doctor on the matter. He also denied that he held her by her shoulders at the time and stated that he remained seated at his desk whilst she was leaving. He stated that the third complainant came to see him during business hours and he could not therefore have done what she alleged at the time. He also denied that later at the dining hall he approached the third complainant and asked her to meet him at the Ambassador Hotel. He also denied that he ever travelled on the bus with her.

On why the third complainant would falsely implicate him in these allegations he repeated that she simply did it to bolster the stories of her other friends, the other complainants, and to justify taking part in the demonstrations.

In connection with Count Four the appellant admitted that the fourth complainant was one of the students who did well in the June 1991 "O" Level examinations. And that he was particularly pleased with her results. The fourth complainant came in the August 1991 holidays to collect her results from the school. These were being collected from the reception desk where the pupils signed for and collected the results slips. The appellant had indicated to the person manning the desk that he wanted to see the students who did well to congratulate them. It was the

duty of the receptionist, one Ms Mutasa, and the school clerk, one Mr Mandebvu, to issue out the results.

According to the appellant, after the fourth complainant had collected her results she came into his office. She found him seated behind his desk but he immediately got up and said "Congratulations, well done ... (the fourth complainant), this is very good". He then went and placed his hand around her shoulders and patted her saying "Well done". After that he discussed with her the implications of the results and that she was to concentrate on the remaining subjects for the November examinations. Thereafter she left the office. The appellant stated that at the time the door was open - it was always open and wedged so when he was in the office. He denied the allegation that he patted her on the buttocks at the time and stated that she was merely saying that in order to justify her participation in the demonstration. He denied that he found her studying in the classroom before she collected the results. He also denied that he was the person issuing the results. He stated that she concocted the story to support her friends - the other complainants.

In connection with Count Seven, the appellant stated that the seventh complainant's allegations are falsified from an incident which occurred on 13 November 1992. According to him, on that day he received a telephone call at his house at about 9.30 pm from some gentleman who identified himself as the seventh complainant's brother. He wanted to speak to the seventh complainant. He told the gentleman that it was rather late but he insisted, saying it was urgent. The appellant told him that all he could do was to convey a message to the seventh complainant. But the gentleman would not leave a message. The appellant suggested that in the

circumstances he should ring again the next day after 8.00 am after the students had finished their breakfast. Thereafter the appellant proceeded to the hostel to inform the seventh complainant about the telephone call. When he got there he got one of the girls to summon the seventh complainant. She found him on the verandah and he told her about the call. He also told her that she could come and wait for the call at his house the next morning. Thereafter he went back to his house and she went back into the hostel.

The appellant stated that he and the seventh complainant only walked along the verandah up to where the building ended. He denied that he walked with her up to the library. He also denied that at the library he propositioned her, tried to kiss her and pushed her against the wall. He stated that there was no way he could have done it because there were classrooms and a lecture theatre around the library area and the boys would have been studying in the library. He added that the school had a guard with a dog who used to prowl around the buildings and that the kind of behaviour alleged would have attracted attention from either the boys or the guard. And the girls would have probably heard any screams. On the seventh complainant's denial that there was a guard and a dog, his reply was that she must have forgotten about it.

The appellant denied he inserted his hand into the seventh complainant's skirt; that she was lying on the ground and he was on top of her; and that he touched her private parts. He stated that all that did not happen. He stated that pupils at the school finish studies at 10.00 pm but that those who liked to continue would be allowed to do so.

One Maxwell Mashoko (“Mashoko”) gave evidence for the defence. He was a deputy headmaster at the school and sometimes acted as headmaster in the absence of the appellant. He stated that some time in 1992 the first complainant’s father came and complained about an anonymous letter written, alleging that the first complainant was misbehaving with boys. He asked the first complainant about it and she denied the allegations. Later he gathered from the first complainant that her father had beaten her because of the letter.

Tried Jokonya (“Tried”) gave evidence for the defence. She was the appellant’s domestic worker from 16 July 1992 to 18 November 1992. According to her, on 7 November 1992 a number of the appellant’s cousins, amongst whom was the first complainant, came to the house. They entered the dining room and discussed some matter with the appellant. Tried did not know how it was resolved. On 8 November 1992 the first and sixth complainants came to the house. They asked to see the appellant and Tried told them he was still asleep. Kudzi went to wake him up and thereafter the two were allowed into the house and went to the bedroom. She did not know what was discussed. After that they both came out and then prepared their breakfast. The first complainant later went to the hostel and returned with a book. She handed the book over to the appellant. In the afternoon the appellant took his children, and the first and sixth complainants remained watching videos.

Tried stated that when the two girls were in the appellant’s bedroom she and others were outside the house. She never heard either of the girls complaining about the appellant. The appellant’s wife was not present that day.

While the first complainant visited the house after that day Tried never saw the sixth complainant at the house again.

Under cross-examination Tried stated that that was the only day the two girls entered the appellant's bedroom. And that they usually saw the appellant in the lounge. She admitted that she wouldn't enter the bedroom whilst the appellant was sleeping because it would be improper. Tried also admitted that when the first complainant went to the hostel to fetch the book the sixth complainant remained.

Chipo also gave evidence for the defence. She was also a student at the school at the relevant time and is the sister-in-law of the appellant. She was at the time staying with the appellant's family at the school. Tried was then a domestic worker of the appellant. Chipo stated that on 8 November 1992 the sixth complainant came to the appellant's house with the first complainant in the morning. Chipo was outside the house with Tried and another person. Chipo and the others told the first and sixth complainants that the appellant was still asleep. The first complainant asked to see him and Kudzi went to wake him up. The two girls entered the house and remained there for some time. They later came out and prepared their breakfast. The appellant later bathed and then left for town with his children. He left Chipo and the two girls watching videos. The two girls left at lunchtime. The girls never complained about anything untoward having been perpetrated by the appellant on them. Chipo stated that prior to that day the first complainant never entered the appellant's bedroom but did so that day.

Under cross-examination Chipo admitted that sometimes the appellant sent either her or Kudzi to call students from the hostels. She, however, denied that on 8 November 1992 she was sent to the hostels to call the sixth complainant. Chipo also stated that at some stage the first complainant left the house and went back to the hostel, leaving the sixth complainant preparing breakfast. She was going to collect a book. She was away for about thirty minutes. She came back with two books and thereafter ate the breakfast which had been prepared by the sixth complainant.

Lindiwe Musikavanhu (“Lindiwe”) also gave evidence for the appellant. She is the appellant’s wife. She confirmed that the first complainant, Julia and their parents were relatives. She also confirmed that they got on well with the parents and that they visited their house almost on a daily basis. She stated that the first complainant was particularly close to the family because she would often come to their house and talk over her problems with her as an aunt and also as her teacher. The first complainant never at any time complained to Lindiwe about being molested by the appellant.

Lindiwe stated that some time in February 1992 the first complainant’s mother came to them (Lindiwe and the appellant), complaining about the first complainant’s relationship with a certain boy by the name of Tavengwa Mwala. The mother wanted them to talk to the first complainant about the matter and to warn her that her father would be very annoyed if her father heard of the relationship. Lindiwe stated that that was why she and the appellant spoke to the first complainant about the matter. Even after they spoke to the first complainant relations between Lindiwe and her family on the one hand and the first complainant on the other continued to

flourish. The first complainant kept on coming to the appellant's house with her friends.

Under cross-examination Lindiwe stated that when she asked the first complainant about her relationship with the boy she mentioned above, the first complainant admitted the relationship but told them that nothing untoward had happened between them. The first complainant denied that she was sleeping with the boy but admitted he was her friend. Lindiwe stated that both she and the appellant asked the first complainant about the affair at their home. She denied that on that day she left the home as soon as the first complainant got there. She stated that she did not leave the house because the appellant had told her that he had sent for the first complainant so that they could ask her about her mother's complaint. Lindiwe stated that when the first complainant's mother complained about the first complainant she was present and that the mother's last words were: "*Sekuru* could you please talk to ... (the first complainant)?".

On why the first complainant would bring the said allegations against the appellant, Lindiwe's reply was that she was surprised and did not know the reason behind it. On whether there was a conspiracy, Lindiwe's reply was that when one considered the close relationship that existed between her family and that of the first complainant she could not understand how all this would come up. She could not understand how a conspiracy could come about in the circumstances. It was put to her that the first complainant's mother denied ever giving the instructions Lindiwe said were given. Her response was that she (the mother) might deny it but they spoke to the first complainant on the matter.

The learned trial magistrate accepted the complainants' evidence and that of most of the State witnesses as credible and reliable. I agree with that finding. Most of the witnesses gave their evidence well and their accounts were in most cases materially corroborated and read well. There was no reason why the complainants would concoct the allegations against the appellant. All the student witnesses and complainants indicated that before the incidents they respected the appellant as their headmaster and a father figure. There had been no bad blood between them and him. As for the other State witnesses, it was admitted that most were closely related to the appellant and that relations between him and them were excellent. Indeed it is significant that the parents of the first complainant did not report the matter to the police. They had wanted the matter to be resolved by the family *dare*. If they had wanted to "fix" the appellant because they thought he had reported James to the police on the assault they would have gone to the police with the first and sixth complainants' allegations. It is also significant that they wanted to protect the appellant by refusing to assist the sixth complainant after she revealed her allegations to them.

On the other hand, the appellant's evidence and that of his witnesses does not read well. In the first instance, most of the relevant witnesses were his close relations. It was clear and understandable that their accounts were tailored to extricate the appellant from the offences. Secondly, most of the witnesses' evidence was irrelevant because they were not at the scenes where the offences were committed. For instance, Chipu and Tried were not in the house when the events of the sixth offence were alleged to have occurred. They said they were outside the house when the first and sixth complainants entered the house. Thirdly, at times the witnesses'

evidence contradicted that of the appellant. For instance, Chipo and Tried agree that whilst the first and sixth complainants were at the house the first complainant went to the hostel to fetch some books leaving the sixth complainant behind. All that the appellant said about the matter was that he reminded the first complainant to bring the books to him at a later stage. He denied that he sent her to fetch the book.

After the above general observations, my view is that the appellant was properly convicted on the above counts. In connection with the first count, I agree that the first complainant's parents never authorised the appellant to counsel the first complainant, let alone physically examine her. They corroborated each other in their denials. The appellant admits that he talked to the first complainant about her relations with boys and asked her about her virginity. That alone is not usual and it is improbable that the parents would have authorised him to do so. There is a dispute between the appellant and his wife as to whether it was the appellant in the presence of his wife, or the wife in the presence of the appellant, who is supposed to have questioned the first complainant on the matter. There is no reason why the first complainant would have lied against the appellant or concocted the allegations. By all accounts, she liked the appellant and used to go to his house often.

I also agree that the appellant admitted the allegation after being confronted by the father. I do not consider that the appellant would have misunderstood the father's question on the matter when he asked him (the appellant) whether he had been asked "*kutarisa mwana*". Surely the father would not have confronted the appellant if he had been asking him whether he had been asked "to look after" or "take care of" the child. His question had some concern, indicating

that he meant “examination of the child”. The appellant must, in my view, have understood it that way. Further, the appellant’s admission is corroborated by the mother of the father who stated that the appellant admitted everything at the second *dare* and was reprimanded for having done so. The evidence of Edward on the matter is unreliable. He clearly admitted in court that his evidence was intended to save the appellant from going into prison. He was clearly a biased witness. Lastly on Count One, the first complainant reported the incident to Julia and reluctantly to an aunt and her father before the matter was eventually reported to the police.

In connection with Count Three, I also consider that the third complainant gave her evidence well. It is common cause that she went to the appellant’s office and found him alone. He admitted that they did converse and that he commented about the pimples on her face. He did not deny that he also talked about scholarships with her although he says it was in a different context. The appellant’s allegation that she had gone to see the appellant for assistance with identifying sponsors because she had problems with school fees caused by the soured relations between her parents was never put to the third complainant. She did not exaggerate what happened to her. There was no reason for her to concoct the incident against the appellant because hitherto she had respected him. Indeed it was because of that respect that she kept the incident to herself for a long time.

The fourth complainant in Count Four also gave her evidence well. It is admitted that she also found the appellant alone in his office and had a conversation with him. It is improbable that if the appellant merely congratulated her on passing her examinations that she would for no reason turn around and allege indecent assault.

The fourth complainant later reported the incident to Dorothy Nyangoni. There was also no reason to concoct the incident against the appellant because she respected him and there was no bad blood between them.

In connection with the sixth count, again the sixth complainant gave her evidence well. Her account reads well whilst that of the appellant on the other hand is confused. It is common cause that she and the first complainant went to the appellant's house on the day the alleged offence was committed. All witnesses, with the exception of the appellant, agree that at some stage the first complainant was sent by the appellant to collect some book, leaving the appellant and the sixth complainant in the house. The sixth complainant made reports of the incident to the first complainant and Julia on the day it occurred. She also later reported the incident to the parents of the first complainant and Julia on different days. Because of the humiliation and fear she had she could not settle and burst out crying one day, causing all these incidents to be revealed. A doctor's report revealed that penetration had been effected. Although this does not necessarily prove that the appellant raped her it is evidence to the fact that she was indeed violated at some stage. When this fact is combined with her strong assertion that she had not indulged in sexual intercourse before the incident with the appellant, it strengthens her allegation. There is also no reason as to why the sixth complainant would have concocted the incident against the appellant. He was her friend's (the first complainant's) uncle and they used to go to his house together a number of times. And there was also no bad blood between her and the appellant.

Lastly, the seventh complainant also gave her evidence well. She did not exaggerate what occurred to her. It is common cause that the appellant went to the hostels on the day in question, purporting to deliver a telephone message to her. He saw her and talked to her and they walked for some distance - he says up to the end of the corridor and she says up to the library. The seventh complainant later reported the incident to her friend, Sandra Keta. The learned trial magistrate's finding that there was no such telephone message cannot be faulted. The intention of the appellant was therefore to get the seventh complainant out of the hostel. There is also no reason why the seventh complainant would concoct such a story against the appellant if all he did was tell her of the telephone call. She respected him and there was no bad blood between them.

I also agree with the learned trial magistrate's finding that the offence committed in Count Seven is attempted rape and not indecent assault. The appellant lured the seventh complainant from the hostel. He thereafter felled her to the ground whilst trying to kiss her. He prised open her legs whilst she was on the ground and whilst he was on top of her. He thereafter pushed her skirt and pants with his hand and touched her private parts. In my view, those were acts of a person intending to rape his victim.

In the result, I find that all the convictions were proper.

On sentence, both counsel were agreed that the sentence on the count of rape - ten years' imprisonment with labour - could not be disturbed in the circumstances. I agree. It is in line with sentences imposed in cases of this nature.

See *S v Nkiwane* HH-155-97 at p 2 of the cyclostyled judgment, where BLACKIE J said:-

“Rape, in general, is a serious offence. It has become prevalent. There is need for deterrent sentences. A first offender, even if little violence is used, can expect sentences of between seven and ten years ...”.

It was common cause that although the appellant was a first offender the offences he committed were very serious. They were aggravated by the fact that he was the headmaster of the school and as such was in a position of authority and trust. He owed the complainants a duty of care and protection - he was *in loco parentis* as regards the complainants. The complainants, being boarders in the appellant's school, had no way of protecting themselves against the appellant. The number of counts suggests the appellant's determination to break the law. And there is a need for deterrent sentences as offences involving sexual molestation of women are on the increase.

Having said the above, I am, however, of the view that the sentence of seven years' imprisonment with labour for attempted rape in this case is in the circumstances too severe and induces a sense of shock. It must be borne in mind that the appellant in this case desisted at the slightest of protests and before he had caused any injury to the victim. The sentence is out of line with sentences imposed in similar cases. See *Ndawana v S* S-30-84 where a sentence of two years' imprisonment with labour, of which six months' imprisonment with labour was suspended for five years on conditions of good behaviour, was considered appropriate in a case of attempted rape. Briefly, the facts in that case were that the appellant entered a room where a fifteen year old girl was sleeping. He tried to kiss her and

attempted to remove her pants whilst at the same time seeking to insert his penis into her vagina. She resisted and screamed and managed to make good her escape. She took refuge in a toilet where on examining herself she discovered that she had sperm on her thigh and on her pants. See also *Katson v S* HH-285-85.

In my view, a sentence of three years' imprisonment with labour would have been appropriate.

I consider that the sentence of twelve months' imprisonment with labour imposed for the indecent assault on the first count was appropriate. The first complainant as a niece was humiliated. This is compounded by the fact that in the circumstances she could not protest. The sentence is in line with sentences imposed in cases of a similar nature. See *Tauya v S* S-4-95; *Katson v S supra*; and *P and M v S* S-248-92.

I, however, consider that the sentences imposed on Counts Three and Four of indecent assault to be excessive in the circumstances. Although the offences were accompanied by proposals and suggestions of love, it should be noted that they did not go beyond patting and, according to the complainants, the appellant's actions were brief. Usually fines are imposed for such offences. However, as the intention of the learned magistrate was to aggregate all the sentences and thereafter suspend a portion of the total on good behaviour it would be inappropriate to impose fines in both cases. I would therefore reduce the sentences to two months' imprisonment with labour in each case.

In the result, the appeal against conviction on all counts is dismissed. The sentences imposed by the court *a quo* are, however, amended to read as follows:

- Count One: Indecent assault - twelve months' imprisonment with labour;
- Count Three: Indecent assault - two months' imprisonment with labour;
- Count Four: Indecent assault - two months' imprisonment with labour;
- Count Six: Rape - ten years' imprisonment with labour;
- Count Seven: Attempted rape - three years' imprisonment with labour.

The sentences in Counts One, Three and Four are to run concurrently to total an effective sentence of one year. The one year is to be added to the sentences in Counts Six and Seven, totalling fourteen years' imprisonment with labour. Of the total sentence, five years' imprisonment with labour is suspended for a period of five years on the condition that the appellant does not during that period commit any offence involving unlawful sexual intercourse or indecent assault for which he is sentenced to imprisonment without the option of a fine.”

McNALLY JA: I agree.

EBRAHIM JA: I agree.

*Mugabe & Partners*, appellant's legal practitioners