

**THE STATE**

**Versus**

**PHELAMANDLA MOYO**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 9 DECEMBER 2004

Criminal Review

**NDOU J:** The accused was aged 32 at the time of the offence. He was charged and subsequently convicted of two charges, one of indecent assault and the other of common assault at Nyamandlovu Magistrates' Court. Nothing turns on the convictions and I confirm them. On the count of indecent assault he was sentenced to 9 months imprisonment and on the assault common 6 months imprisonment.

The facts reveal that the complainant was a juvenile aged 15 years at the time of the sexual abuse. The age difference between the accused and the complainant is around 17 years. The two are cousins and stayed in the same homestead. They shared the bedroom. The accused came home from a beer drink and found the complainant already asleep. The accused reduced himself to nudity and joined the complainant in bed. Later he pulled the complainant towards him resulting in the latter's pants being torn. The accused then pressed his erect male organ against the complainant's buttocks and legs, indulging in a sexual act. The complainant woke up and demanded to know what the accused was doing. The accused stopped for a while and later repeated the act resulting in the complainant breaking free and running out of the hut in the middle of the night and seek refuge with their neighbours. The following day the complainant returned home and the accused assaulted him for

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making a report to the neighbours. I have no qualms with the sentence on the charge of assault common. Although it appears severe it is within the sentencing discretion of the trial magistrate. The sentence on the charge of indecent assault is disturbingly inappropriate. It is very lenient. This is a serious form of sexual abuse. Sexual abuse of boys is on the increase. The accused came very close to achieving non-consensual sexual intercourse per *anum* with this juvenile. This was unprotected intercourse. This type of conduct exposes children to untold trauma and incurable diseases. The moral blameworthiness of the accused is very high and I consider an effective sentence in the region of three to five years imprisonment as being appropriate – *S v Katson* HH-285-85 and *S v Ndlovu* HB-66-03.

Accordingly, I confirm the convictions on both charges. I also confirm the sentence imposed on count 2. I am, however, unable to certify the sentence imposed in count 1 as being in accordance with true and substantial justice.