

THE STATE

Versus

SYLVIA CHIPADZA

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 24 FEBRUARY 2005

Criminal Review

NDOU J: The accused was aged 18 years at the time of the offence. She is a female first offender. She was charged with three counts of committing an immoral or indecent act with or upon a young person in contravention of section 3(1)(b) of the Sexual Offences Act [Chapter 9:21]. She was convicted by a Gweru Senior Magistrate and sentenced to three (3) months on each count. Nothing turns on the convictions. However, the learned scrutinising Senior Regional Magistrate, Central Division was not satisfied with the propriety of the sentence and referred the matter for review. The brief facts are that the accused was employed by the complainant's parents as a domestic worker commonly categorised as a maid. The complainant was aged (nine) 9 years at the time of the offence. The accused shared the same bedroom with the complainant. On three different occasions between 19 June and 11 July 2004 the accused would wake up a night, undress herself and then place the young complainant on top of her. The accused would then caress the penis of the 9 year old boy (complainant), insert it into her vagina ordering the boy to make up and down movements, thus engaging in some form of sexual intercourse with the boy. The matter only came to light when the complainant made a report to his aunt after the third incident.

HB 13/05

I agree with the learned scrutinising Regional Magistrate that a sentence of nine (9) months imprisonment for this kind of offence is disturbingly lenient. This is a serious form of sexual abuse of a child. There is no scientific basis for distinguishing the trauma suffered by a boy from that of a girl in such cases of child abuse. The penalty provision of the sexual offences for which the accused stands accused is a maximum of ten (10) years imprisonment. In *S v Ndlovu* HB—66-03 at page 3 I commented on this very issue as follows:

“Sexual abuse of children is viewed in a very serious light. This type of conduct is very common thus exposing children to untold trauma and incurable diseases. Contrary to the view held by the learned trial magistrate, the Sexual Offences Act protects children equally be they girls or boys. The definition of a young person in section 2 clearly states that this means a boy or girl under the age of sixteen. Some of the old cases give the impression that abusers of boys should be treated more lenient than abusers of girls. It is clear that in those days the abuse of boys was not as prevalent as that of girls. In this day and age I do not find any legal basis for the distinction. Sexual abuse of all children is prevalent and should be viewed in a very serious light.”

In *S v Chikunguruse* HH-125-04, GUVAVA J seems to share the same views.

Looking at all the mitigatory features and aggravation in this case, a sentence in the regions of six years was called for.

Accordingly, I confirm the convictions. I am, however, unable to certify the sentences imposed as being in accordance with true and substantial justice. On that account I withhold my certificate.