

THE STATE

VERSUS

- (1) RABSON DUBE: REG 143/10**
- (2) STEPHANE SIBANDA: REG 102/10**

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 22 JULY 2010

Review Judgment

CHEDA J: The above cases have been referred to me for review.

As they present a similar issue I have decided to deal with them together.

Rabson Dube: CRB 143/10

The facts of this case were presented and captured in the following manner:

Accused a 49 year old man was charged with 4 counts of rape which occurred between 2003 and 11 April 2008. Accused is related to the complainant as he is her step-father. He pleaded not guilty, but, was however, convicted and sentenced to 12 years imprisonment on each count, totalling 36 years of which 6 years imprisonment was suspended on condition of good behaviour.

Stephane Sibanda: CRB 102/10

On the second case, accused is 22 years of age while the complainant is 15 years. The facts of the case are that sometime in August 2009 complainant was sent to fetch some firewood in the nearby bush, at village 5, Zimdabule bushes, Nyamandlovu. Accused is alleged

to have had sexual intercourse with the complainant on three different occasions between August and October 2009. The rape was discovered when complainant made a report to a neighbour Saneliso Ndlovu. This led to accused's arrest. He pleaded not guilty, but, was convicted and sentenced to 12 years imprisonment on each count which totalled 36 years imprisonment of which 6 years imprisonment was suspended for 5 years on the usual conditions.

The convictions in my view are proper but the sentences appear to be on the harsh side. The issue is with regards to sentence. Rape on a minor is a very serious offence, it is more aggravating when the minor is under the authority of the rapist. In the first case the relationship was that of step-father and step-daughter. While in the second case accused was staying in the same homestead with the complainant.

While courts are enjoined to pass stiff sentences on such perpetrators, there is need for the courts to weigh the age of the accused vis-a-vis the cumulative effective of the totality of the sentence imposed. In my view as much as an accused person should be punished for his transgressions, it should not be forgotten that he still has a life to lead after squaring up his debt with society.

An effective sentence of 30 years for rape has no difference with being caged for life.

While the traumatic effect of rape on a victim can not be glossed over, it should not be forgotten that a sentence of 30 years effective irrespective of the number of counts may tend to sway society's sympathy to the accused when it is intended to be the other way round. Where there are multiple counts, the court must carefully weigh the factors from both the complainant and accused's side and avoid a mathematical approach to sentence, see *S v*

Makurira 1975(3) SA83(R) and *S v Nyathi* 2003(1) ZLR 587(H). Our courts' approach to sentencing is that;

- (1) punishment should fit both the criminal and the crime.
- (2) It should be fair to the State and the accused, and
- (3) Should be blended with mercy, although the accused should be punished he should not get to a point of being broken see *S v Shariwa* 2003(1) ZLR 314 at 316-317.

The sentences imposed in this matter are very harsh and there is a need for interference by the reviewing Judge.

The convictions are confirmed, but, the sentences are set aside and are substituted by the following:

In both cases, all the counts are treated together for sentence

Each accused- 25 years imprisonment of which 5 years imprisonment is suspended for 5 years on condition accused does not during that period commit any offence of which sex is an element for which upon conviction accused is sentenced to imprisonment without the option of a fine.

Effective- 20 years imprisonment.

Cheda J.....

Kamocha J agrees.....