

THE STATE

VERSUS

SIBUSISO MKWANANZI

IN THE HIGH COURT OF ZIMBABWE

CHEDA J

BULAWAYO 22 JULY 2010

Review Judgment

CHEDA J: This is a review matter forwarded to me as per the usual review procedure for reviews.

Accused was charged with 6 counts of rape to which charges he pleaded not guilty. A trial was convened he was duly convicted and was sentenced as follows:-

“Each count 6 years imprisonment of the total 36 years imprisonment of which 6 years is suspended on condition accused does not within 5 years commit any offence of a sexual nature for which upon conviction he is sentenced to imprisonment without the option of a fine.”

Nothing turns on the conviction, but, the issue arises with regards to sentence. He was sentenced to a total of 36 years imprisonment. This type of sentence, taken cumulatively induces a sense of shock to any right thinking human being.

While rape is a serious offence and the courts are indeed empowered to show their indignation by passing very stiff sentences, there is however, a need to strike a balance between the interest of society and that of the accused.

In as much as the accused has indeed offended both the complainant and society, he should not be punished almost to a breaking point. Regard should be had to the fact that he

has the right to life after squaring his debt with society. A sentence which tends to leave an accused with no life after serving his term in prison should be discouraged. It is for that reason that magistrates should avoid a mathematical approach when it comes to sentencing.

In casu the conviction is confirmed but the sentence is set aside and is substituted by the following:

All counts are treated as one for the purposes of sentence;

20 years imprisonment of which 2 years imprisonment is suspended for 5 years on condition accused does not within 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- 18 years imprisonment.

Cheda J.....

Kamocha J agrees.....