

THE STATE

VERSUS

PRINCE TIRIVAVI

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 9 SEPTEMBER 2010

Review Judgment

CHEDA J: This matter came to me by a way of a review procedure. Accused was charged with rape of which he pleaded not guilty, but, was convicted and sentenced to 3 years imprisonment which was wholly suspended for 5 years on condition of good behaviour.

The brief facts of the case are that accused who was aged 15 years at the time and was in Form 3, was staying with the complainant who was in grade 2 and aged 9 years.

The circumstances surrounding the offence is that complainant had been left in the house by her grandmother Chipso Sibanda when accused raped her once. The accused is a minor so is the complainant.

The conviction is proper, but, it is the sentence which is of great concern to me. While it is proper that an accused of his age should not be sentenced to an effective imprisonment. In my view, he should have been given an effective punishment in the language he understands better. In the circumstances, the language he understands better is a cane. The cane has been known to effectively and adequately correct children, hence the old English adage, that, "spare the rod and spoil the child."

While sentencing is invariably the domain of the trial court, sight should not be lost that the court has a duty to impose a sentence that should be viewed by society as just in order to avoid society desperately resorting to self-help. The universally accepted test in our jurisdiction is that justice should not only be done but be seen to have been done, certainly it is not the case here.

I am of the considered view that the sentence imposed by the court a quo was inadequate and improper as it is, it does not accord with real and substantial justice.

This is a case where accused should have been sentenced to between 4 to 6 cuts coupled with a wholly suspended prison term.

In light of the above I have no alternative but to withhold my certificate.

Cheda J.....