

THE STATE

AND

ROYAN MARUPI

IN THE HIGH COURT OF ZIMBABWE

CHEDA J

BULAWAYO 30 JUNE 2011

Review Judgment

CHEDA J: This is a review judgment forwarded to me as is the normal review procedure, in particular as the scrutiny Regional Magistrate raised a query.

The accused was charged with contravening section 89 of the Criminal Law Codification and Reform Act [Chapter 9:23]. He pleaded guilty, was convicted and sentenced as follows:

“7 months imprisonment of which 2 months imprisonment is suspended for 5 years on condition accused does not during that period commit any offence involving assault and for which upon conviction he is sentenced to imprisonment without the option of a fine. The remaining 5 months imprisonment is wholly suspended on condition accused completes 175 hours of community service at Beitbridge Magistrates’ Court. The community service shall commence on Monday to Friday excluding public holidays between the hours of 8am to 1pm and 2pm to 4pm and to the satisfaction of the person incharge at the institution. The performance shall commence o 07 September 2010 and must be completed within 5 weeks of that date.”

Nothing turns on the conviction, but, it is the sentence which needs close scrutiny. The scrutiny Regional Magistrate observed that the medical report was produced after conviction and immediately before mitigation. When he raised this with the trial magistrate his response was that the medical report can be produced anytime before sentence in view of the fact that the offence is now covered by the Criminal Law Codification and Reform Act.

With all due respect to the learned trial magistrate, the court should have all the information regarding the commission of the offence before conviction, and this includes production of the weapon if any, and opinion of a professionally trained person to determine the injuries of the complainant and advise as to the possibility of a disability or some such

consequences which may flow from the injuries sustained by the complainant. It has always been these courts' position that magistrates are not properly qualified to form an opinion on matters outside their discipline, more particularly medical matters which is a science discipline for which a good pass in a science subject at 'A' level is a pre-requisite. Such opinions should be entirely left with the medical practitioners who are science-oriented, see;

S v Sibanda and another HB 65/92 (cyclostyled) at page 6 where CHEDA J (as he then was) stated;

“... in the absence of any medical reports, the magistrate was wrong in convicting the accused of assault with intent to do grievous bodily harm.”

The accused has already served his sentence which was unfair and unjust.

Magistrates in particular those at the Provincial level should be willing to be guided by their supervisors, Regional Magistrates included. This is not a sign of weakness, but, infact is a sign of pragmatism as it is through experience from their seniors that they can permanently learn the art of trials.

The following order is made:

Order

- (1) The conviction is quashed and is substituted by the conviction for common assault.
- (2) The sentence is confirmed.

Cheda J.....

Kamocho J agrees.....