

QHUBEKANI MAPHOSA

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J AND CHEDA AJ
BULAWAYO 1 OCTOBER 2012 & 28 FEBRUARY 2013

Appellant in person
T. Hove for respondent

Criminal Appeal

KAMOCHA J: The appellant was charged with one count of kidnapping Thandiwe Dube on 30 November 2011 in contravention of section 93 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. It being alleged that on the fateful day the accused arrived at the complainant's homestead and began to assault her brother Bhekithemba Dube. He thereafter dragged the complainant from her home to a bushy area where he unlawfully detained her for more than 5 hours.

Having forcibly removed the complainant from her home he allegedly raped her five times while she was under his detention. He allegedly raped her on two occasions during the night of 30 November 2011 and three times during the early hours and morning of 1 December 2011.

The appellant appeared in the regional court in Bulawayo and pleaded not guilty to all the charges but was found guilty at the end of the trial despite his protestations.

He was sentenced to 3 years imprisonment of which one year imprisonment was suspended for 5 years on the usual conditions of future good behaviour in respect of the charge of kidnapping. The five counts of rape were treated as one for the purpose of sentence and he was sentenced to undergo 20 years imprisonment of which 2 years imprisonment was suspended for 5 years on the customary conditions of future good behaviour. He sought leave of this court to prosecute an appeal in person against both conviction and sentence but was granted leave to appeal against conviction only.

The appellant and the complainant were once in love. Trouble started when the complainant terminated the affair. The accused would not have any of that. That led to his violent conduct.

While in that violent mode he proceeded to the complainant's home at about 5pm. He greeted no one on arrival. He went straight for the complainant and grabbed her by her hand and began to drag her out of the homestead. As soon as he got out of the homestead he started to beat her up.

Themba Dube her brother went to intervene but the appellant turned onto him. He grabbed hold of his private parts and his waist. A scuffle ensued during which the appellant drew out a knife with which he struck at Themba who ducked but the knife tore his T-shirt. Themba gave up the idea to rescue his sister. A certain neighbour was called to come and assist but the appellant told the old man to go back to his home and sleep. The old man obliged and went away.

The appellant grabbed hold of the complainant and told her to go and show him the place where his clothes were allegedly burnt by her sister who had influenced her to terminate the love affair with him. He forcibly took her away and while on their way he took a switch from a tree which he belaboured her with. When she broke free and attempted to flee, he drew his Okapi knife from one of his short trousers pockets and threatened to kill her if she screamed or made any other noise to attract attention.

Appellant led her to the bush and continued to beat her up with switches as he led her. Complainant was carrying her 15 months old child when all this took place.

The appellant raped her after assaulting her. After the first rape he allowed her to breast feed the child who was crying. Thereafter the beating continued until he raped her for the second time. The accused had allegedly burnt her skirt and under pants with fire using matches leaving her almost naked. Her evidence is that when she requested for clothes to put on the appellant went to his uncle's place and brought her clothes to cover herself.

They then left the bush and proceeded to the appellant's home where she was taken into one of the houses. She was ordered to lie on a bed but she refused to do so whereupon he again drew his Okapi knife and threatened to stab her with it. She got onto the bed as ordered and he raped her for the third time.

Thereafter she was unable to sleep due to pain following the assaults. The accused raped her for the fourth time and fell asleep thereafter. He raped her for the fifth time in the morning and he then ordered her to strap her child on her back and go away.

When she got home she narrated her ordeal to her sister Sindiso Dube that the appellant had raped her during the ordeal.

The complainant's evidence reads well and is very clear. It was satisfactory in every material respect.

The trial court cannot be faulted for relying on it. The complainant is corroborated by her brother Themba. He witnessed the appellant assaulting the complainant and was also attacked when he tried to intervene. He helplessly watched the appellant dragging the complainant into the bush until he vanished with her.

The complainant's narration of the five counts of rape was very satisfactory and convincing. She was worth to be believed. The trial court, therefore, cannot be faulted for convicting the appellant on the five counts of rape.

Appellant does not deny removing the complainant from her home and beating her up several times on the way to the extent that he suggested that he could not have had sexual intercourse with her as a result of the pain he had inflicted on her. His suggestion that he did not have sexual intercourse with her during the ordeal is, of course, false and was, in my view, correctly rejected by the trial court.

This appeal is completely devoid of any merit and is hereby dismissed.

Cheda AJI agree

Attorney-General's Office respondent's legal practitioners