

VENGAI CHIROVAPASI

versus

STATE

HIGH COURT OF ZIMBABWE

BACHI MZAWAZI J

Chinhoyi, 2 June 2023

Criminal Review

BACHI MZAWAZI J: Ordinarily upper courts do not unnecessarily interfere with the decisions of the lower court unless there has been an exhibition of gross injustice and misdirections. This has been pronounced in a multitude of case authorities amongst them, *Zimbabwe Platinum Mines (Private) Limited v Ronald Godides SC17/14 Barros Chimphanda 1999 (1) ZLR 58 at 62.*

In the present case, the conviction cannot be queried as the accused pleaded to the charge. What is in issue however is the leniency of the sentence vizaviz the gravity of the offence.

Though an assault case, this case falls within the higher end of aggravated assault as not only the weapon used was dangerous but the degree and extent of the injuries sustained by the victim coupled with the circumstances surrounding the commission of the offence.

The medical report which cannot be ignored stated that the injuries were severe. There was a likelihood of permanent injuries. The medical practitioner's general comments were to the effect that there was tendon and nerve damage.

Medically, a cut to tendon or nerve may result in loss of movement of the hand or wrist. Nerves are connected to the brain and central nervous system any interruption of that network can affect signals to other parts of the body, brain and muscles.

In view of the fact that the accused and his accomplice were the aggressors who had to go and attack the complainant in his own home and the scuffle was over a petty issue involving a cellphone, a stiffer penalty was called for.

Whilst alternatives to imprisonment terms are commendable in the sentencing of first offenders, in assault matters the trial court should not be restricted only to the nature of the weapon used but the part of the body the blow was directed, the extent of the injuries and other factors peculiar to the case.

In my considered view this is one of those cases where a custodial term was appropriate in view of the observations already made above.

Society should be conscientized not take the law in their own hands. The punishment method by courts should reflect that there is need for society at large to learn peaceful dispute resolutions, conflict and anger management.

The facts as borne by the state outline, are that the accused person in the company of his co-accused who did not tender a guilty plea resulting in the separation of trial and the complainant are related. The trio had a dispute over an itel cellphone belonging to the other accused at the complainant's homestead. It is alleged that though the complainant handed over the phone to the said accused person he was attacked with a machete by the 1st accused on his right hand and further assaulted on the head by the 2nd accused. He sustained severe injuries as reflected on the medical report resulting in the arrest off the accused persons.

The accused person pleaded guilty and was convicted on his own guilty plea. Whilst the other accused pleaded not guilty.

The accused person was sentenced to 13 months imprisonment of which 5 months was suspended on condition accused does not commit any offence involving assault or violence on another on which upon conviction will be sentenced to imprisonment without the option of a fine. The remaining 8 months wholly suspended on condition of community service.

For the above reasons sentencing the accused person to community service does not reflect the seriousness of the offence. It does not effectively deter the offender.

Accordingly, I withhold my certificate as the sentence was not in accordance with real and substantial justice.

Honourable Mrs. Justice Bachi-Mzawazi

Honourable Mrs. Justice Muzofa – I Agree