

ISSIAH MAPFUMO
versus
THE STATE

HIGH COURT OF ZIMBABWE
PHIRI J
HARARE, 30 May 2018

Bail

M Chigwaza, for the applicant
E. Makoto, for the respondent

PHIRI J: This is an application for bail pending appeal.

The applicant was arraigned before the Chinhoyi Regional Magistrates Court for contravention of s 65 (1) of the Criminal Law Codification and Reform Act [*Chapter 9:23*] (Rape four counts).

The applicant pleaded not guilty to all four counts but was convicted to a total of 30 years imprisonment of which 5 years were suspended on certain conditions.

In an application for bail pending appeal the main consideration is whether there are prospects of success on appeal. See *S v Dzawo* 1988 (2) ZLR 536.

The Offence

The State adduced evidence that the applicant had unlawful sexual intercourse with the complainant from the period extending from August to December, 2015 at farm 335 Msengezi.

In the first count the applicant testified that the applicant took advantage of the absence of her husband and entered her house, at night whilst he was holding a knife. He had unlawful sexual intercourse with her and threatened her with death.

On the other 3 occasions the applicant testified that she was way laid by the applicant who had unlawful sexual intercourse with her, without, her consent.

The court was satisfied that the complainant was a credible and reliable witness who gave a “detailed narration of events” that is not consistent with fabrication of evidence (see p 13 of the record).

The applicant was complainant’s nephew.

The court was also satisfied that the applicant had sexual intercourse with the complainant and this was accompanied by threats of violence.

The court held that complainant was not shaken during cross examination.

It is therefore highly unlikely that an appeal court is likely to interfere with her evidence.

This court agrees with submissions made on behalf of the respondents in this regard. See *S v Soko* SC 118/92 and *S v Mlambo* 1994 (2) ZLR 410 cases which confirm that an appeal court hardly interferes with findings of credibility by lower courts.

The record also shows why complainant took a long time in reporting this offence namely the threats of violence and the fact that she was staying alone. She also felt it safer to report the offence after her husband had been dismissed from work. The record also shows that her report was voluntary.

In the circumstances this court agrees, that the conviction is unassailable and that the sentence does not induce a sense of shock given the multiple counts in this case.

This court holds that an appeal court is unlikely to interfere with both conviction and sentence.

This application for bail pending appeal is accordingly dismissed.

Chokore and Chigwaza Law Chambers, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners