

THE STATE
versus
FRANCIS MANDEVERE

HIGH COURT OF ZIMBABWE
MAWADZE J.
MASVINGO, 7TH April, 2021

Criminal Review

MAWADZE J: The matter was referred to me by the Scrutinising Regional Magistrate at Masvingo.

The Regional Magistrate's bone of contention is that the sentence imposed by the court *a quo* is manifestly lenient in light of the nature of the offence of robbery and that a knife was used to intimidate the complainant. Unfortunately the Regional Magistrate, besides citing certain decided cases does not proffer any suggestion as to what should be the appropriate sentence.

The 41 year old accused who is a first offender pleaded guilty to robbery as defined in s 126 of the Criminal Code [*Cap 9:23*].

The agreed facts are that the accused lured the impressionable 18 year old female complainant telephonically from Shurugwi to Chivi on the pretext of offering her a job as store keeper. The unsuspecting complainant arrived at Chivi Growth Point on 12 March 2021 and met the accused who lured her into the bush on the false pretext of going to the accused's non-existent shop. Whilst in the bush some 4 km from Chivi Growth Point the accused pulled out a knife and demanded to be intimate with the complainant. The complainant refused and offered to render the sexual favours not in the bush but at accused's alleged shop. The accused probably realising that he had been beaten to his own game then demanded money and cellphone from the

complainant at knife point. The complainant surrendered her cellphone (after giving the accused the password for the cellphone) and US\$10.

It is not clear how or when accused was arrested as he vanished from the scene. However upon accused's arrest complainant's cellphone was recovered whose value is \$2 500. The US\$10 was not recovered.

In mitigation the accused indicated that he committed the offence in order to raise some money for his upkeep.

The 41 year old accused is a first offender. He is married with 3 children aged 20 years, 15 years and 8 years. He is a fire wood vendor realising a paltry \$18 per week. The accused had US\$37 and \$116 as savings. Besides a scotch cart, 6 donkeys, 2 goats and 12 chickens he has no other assets.

After considering the aggravating and mitigatory factors the court *a quo* sentenced he accused to 12 months imprisonment of which 3 months imprisonment was suspended for 5 years on the usual conditions of good behaviour. Of the remainder of 9 months, 1 month imprisonment was suspended on condition the accused restitutes the complainant US\$10 through the Clerk of Court, Chivi on or before 31 March, 2021, leaving an effective prison term of 8 months.

The trial Magistrate reasoned that despite being a first offender who pleaded guilty an effective custodial term was warranted as the accused robbed an 18 year old girl at knife point. The trial Magistrate also considered the element of premeditation and the benefit accused derived from the offence. The order for restitution was to degorge the accused of that benefit.

In all fairness I find no misdirection on the part of the trial Magistrate in how the sentence was assessed. Meaningful inquiry into mitigation was carried out. The trial Magistrate clearly explained why an effective prison term was warranted. As a first offender the accused benefited from a conditionally suspended sentence and restitution was ordered to mitigate the actual prejudice caused.

Indeed robbery is a serious offence. The accused clearly planned to commit this offence. The victim who is just 18 years old should have been terrified to be robbed at knife point by a person she had reposed her trust, more so after travelling all the way from Shurugwi to Chivi Growth point.

In my respectful view a proper balance was made in considering the mitigatory and aggravating factors. The overall sentence of 12 months imprisonment and the effective 8 months imprisonment cannot be said to be manifestly lenient.

In the result, I confirm the proceedings as in accordance with real and substantial justice.