

Judgment No. S.C. 102/84
Criminal Appeal No. 77/84

ROBWELL MAZORODZE v THE STATE

SUPREME COURT OF ZIMBABWE,
DUMBUTSHENA, CJ, GUBBAY, JA & McNALLY, J A,
HARARE, OCTOBER 22 & 30, 1984.

M.J. Gillespie, for the appellant

M. "Werrett, for the respondent

GUBBAY, JA: The appellant was convicted of the crime of arson, it being alleged in the charge sheet that on 16 August 1983 and at Mbeure Kraal he wrongfully set fire to a certain hut there situate, the property of Violet Chirigo, with intent to injure her in her property. He was sentenced to 30 months' imprisonment with labour of which period six months was conditionally suspended for five years. He now appeals against both conviction and sentence.

It was not in dispute that for a period of about two years the complainant, Violet Chirigo, and the appellant lived together as man and wife at the kraal of the appellant. The complainant then returned to the kraal of her brother, Gilbert Chirigo. Six months after leaving the appellant's kraal the complainant built a bedroom hut a little distance away from the huts of her brother. She occupied this hut and the appellant visited her there periodically. It seems that she was in the habit of bestowing her favours on other men as well as upon the appellant.

On 29 July 1983 a quarrel erupted between the appellant and the complainant. The appellant claimed that certain property in the complainant's possession belonged to him and he wished to remove it from her huts.

The complainant was not prepared to allow him to do so in the absence of her brother. Later that day the complainant discovered that her kitchen hut was on fire.

She suspected the appellant, who was still present in the kraal, to be responsible and caused him to be arrested by the Police. Subsequently he was released but ordered to report at the Police Station on 16 August 1983. The complainant remained at the Police Station in fear that the appellant might harm her were she to return home.

On 16 August, after presenting himself at the Police Station, the appellant proceeded by bus to Mbeure Kraal. Once there he set fire to the complainant's bedroom hut, after first ensuring that it was unoccupied. His action was motivated by a desire to avenge himself against the complainant, whom he considered had unjustly caused his arrest.

Although admitting setting the hut on fire and completely destroying the property therein, the appellant's defence was that both the hut and all its contents belonged to him. He claimed that as the complainant was barren he had given her money to build a bedroom" hut so as to appease her ancestral spirits.

The property inside the hut, he said, had been provided to the complainant when she had been living with him.

When departing she had taken with her a bed, wardrobe, cooking utensils, dresses, shoes, blankets, a briefcase and a suitcase.

The appellant's wife, Violet Mazorodze, while unaware of whether the appellant had paid for the construction of the bedroom hut, testified that when the complainant had left the appellant's kraal for that of her brother, she had removed certain property which the appellant had purchased. It consisted of a bed, blankets, dresses, cooking utensils and crockery – even chickens and goats,

The complainant, strongly disputed that the appellant had advanced

any money towards the construction of the hut and that it had been built to appease her ancestral spirits. She was not barren - having previously given birth to a child - and had not fallen pregnant while consorting with the appellant because she had used contraceptives. She said that she had expended \$40 of her own money upon the construction of the hut.

The complainant was corroborated by her brother Gilbert. He deposed that the complainant had sold some of her sheep in order to raise money for the purchase of building materials, and that he had personally assisted her to build the bedroom hut. Moreover, at his instigation it had been sited away from his own.

The trial magistrate disbelieved the appellant's assertion that the hut belonged to him as "both unsound and baseless". He accepted the evidence of the complainant and her brother on the crucial issue. In my view he was fully justified in doing so. Not only had the hut been erected at the complainant's tribal home as opposed to that of the appellant, but in addition its construction had commenced six months after she had ceased to live with the appellant. Furthermore, the appellant's assertion that he had financed its construction was suspect for the very reason that he made no attempt to state how much money he had expended thereon.

I entertain no doubt that the appellant had nothing whatsoever to do with the construction of the bedroom hut, and that when he set it on fire he did so in the full knowledge that it belonged to the complainant. He was therefore properly convicted.

With regard to sentence, it may well be, as Mr Gillespie urged, that the complainant exaggerated both the quantum and the value of the property destroyed in the fire. This was fairly conceded by Miss Werrett on behalf of the State. I am also prepared to accept in the appellant's favour that some of that property had been purchased by him for the complainant during the years they resided together at his kraal, and that he looked upon it as his own. This would appear to be borne out by the attempt he made on 29 July 1983 to recover it from the complainant.

However that may be, it is plain that the economic loss caused to the complainant was very substantial indeed. That, of course, is a feature which aggravates an inherently serious offence. Furthermore, as the magistrate emphasised, the burning was planned and premeditated. It was not carried out on the spur of the moment while the appellant's passions were still inflamed. He had plenty of time while on the bus journey to the complainant's kraal to reconsider the folly of such an action. It seems to me also that in committing the offence when facing a charge of having burnt down the complainant's kitchen hut (subsequently withdrawn), the appellant showed a brazen disregard for the law. As against these features, account must be taken - as indeed the magistrate did - of the appellant's clean record and of the fact that before setting the hut alight he made certain that it was unoccupied.