

**THE STATE**

**Versus**

**SIKHUMBUZO MPOFU**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA AJ  
BULAWAYO 28 NOVEMBER 2012

Review Judgment

**CHEDA AJ:** The accused was charged with rape as defined in section 65 (1) (a) of the Criminal Law (Codification and Reform) Act Chapter 9:23.

The record of proceedings shows that he pleaded guilty.

The state outline was read to him and he agreed with it. The essential elements of the offence were also put to him and he admitted having had sexual intercourse with the complainant.

However, on reading the state outline I found that it only says that the 28 year old accused grabbed the 14 year old female juvenile and laid her on her back without her consent. She screamed and called for help from the voices of people passing by and the accused freed her.

The state outline says absolutely nothing about having sexual intercourse with her.

The record further shows that the matter was remanded to a later date. On resuming the prosecutor advised the court that the accused's relatives approached him and mentioned that the accused is a known mental patient and suggested that he be referred for medical examination by two doctors in terms of the Mental Health Act.

After the medical examination the matter resumed and the medical reports were exhibited to the court. The 2 medical reports said the accused was mentally stable.

The court then proceeded to convict him and sentenced him to 15 years imprisonment. When I raised queries with the trial court about the conviction I was advised that the trial magistrate has since left the service.

It is not clear why the accused was asked to admit facts which did not appear on the state outline. There was nothing in the state outline about having sexual intercourse with the complainant. The medical examination on the complainant did not reveal any penetration or injury on her. In fact they contradict the charge put to him since the facts say the accused grabbed her and laid her on her back and when she heard voices of passers-by she screamed and called for help and the accused freed her.

There is nothing to suggest that he did anything more after laying her down. It was therefore improper to proceed to put to him allegations that were not on the state outline.

A normal person would not under such circumstances admit raping the complainant. The admission of all the non-existent facts clearly shows there is something wrong with the accused. Even without the alleged mental problem there is still nothing to support a crime of rape for which he was convicted. At the most he could have been guilty of assault.

I am satisfied that the conviction of the accused on a charge of rape was wrong and should be set aside.

The accused was sentenced on 7 September 2012 and the period he has served would by now be more than what he could get for an assault on the complainant had he been convicted of that assault.

It is ordered that the conviction of the accused on a charge of rape and the sentence are set aside.

A warrant of liberation is to be issued for the accused to be released from prison with immediate effect.

Kamocha J .....I agree