THE STATE
versus
PREVIOUS SHUMBA

HIGH COURT OF ZIMBABWE
BHUNU J
Harare, 19 October 2007

Criminal Review

BHUNU J: The accused is a member of the neighbourhood watch committee. On 18 March 2007 he was at Gundura business centre Gokwe together with seven colleagues, investigating crime. During the course of investigations the accused and his accomplices accosted the seventeen complainants at a local shop.

As the investigations progressed they suspected that one of the seventeen complainants had clandestinely dropped some dagga on the floor. They were however unable to identify the culprit and none of the seventeen complainants owned up. This resulted in the accused and his accomplices severely assaulting all the seventeen complainants in a bid to identify the culprit. The medical affidavits show that he complainants sustained bruises on the buttocks and all over their bodies and that severe force was used to inflict the injuries.

The accused is a married young first offender of 28 years of age. He pleaded guilty and was contrite. On those facts he was convicted of seventeen counts of assault as defined in the Criminal Code. All the seventeen counts were treated as one for the purpose of sentence. He was then sentenced to$40 000–00 or in default of payment ten months imprisonment.

It is needless to say that the sentence is too lenient so as to induce a sense of shock albeit that the alternative period of imprisonment is grossly disproportionate to the amount of fine. See *S* v *Nyirenda* 1988 (1) ZLR 160 (H).

As a member of the neighbourhood watch committee the accused was in a responsible position of trust and yet he abused that position of trust and responsibility giving the police and government which had authorized them to carryout investigations a bad name in the process.

The offence being investigated was apparently a trivial one which did not at all warrant the callous high handed manner in which the accused and his accomplices conducted their

investigations. The use of force was totally uncalled for as none of the suspects had resisted arrest or done anything to warrant the use of force.

Courts take a serious view to offences involving the abuse of authority, callousness and brutality. For authority for that proposition of law one need not to go beyond *Professor G Feltoe's Guide To Sentencing in Zimbabwe* at p 128 where the learned professor had occasion to remark that:

> **"1. Authority – abuse of position of authority**
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> It will be an aggravating feature if policemen and others in positions of authority assault persons whom they are supposed to protect. See for instance *Chigomba* S 6–83 (municipal policeman) *Korera & Anor* S 105–83 (off duty policeman) *Phiri* S 83–86. (Military policeman) *Chasango* HH 705–87 (Soldier) *Nyoni* HH 703– 87 (policeman).
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> **2. Brutality and callousness**
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> If during the commission of a crime such as robbery the offender uses unnecessary violence or brutality or cruelty this will be an aggravating factor. So too if during an assault the offender deliberately tortures his victim to cause him considerable pain. See for instance *James* HH 137–83 and *Horwe* 311–86. See also *Walken* 1971 (3) SA 488 (A) and *Dagular* 1975 (2) PH H 110 (A)".

In the case of *Nelson Chadamoyo & Anor* v *The State* HC 75–83 a police officer had been convicted of assault with intent to cause grievous bodily and sentenced to twelve months imprisonment of which five months were suspended on appropriate conditions of good behaviour. Aggrieved by the severity of sentence he appealed to the High Court. In dismissing the appeal MCNALLY J as he then observed that:

> "This kind of unprovoked brutality by police in the course of and in total disregard of their duty to protect people cannot be too strongly condemned. It is fortunate that examples of such conduct are rare. When it occurs, punishment must be effective and a fine, save perhaps in very exceptional circumstances will be wholly inadequate retribution.
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> Even had the conviction been for common assault only, we take the view that a prison sentence would have been justified. The community is rightly outraged when the very people whose function is to protect them turn against them in this way" (my emphasis).

In this case it is clear that the brutal assaults perpetrated on seventeen helpless defenseless souls were wicked and uncalled for. They were motivated by sheer love of the

abuse of power and wickedness. For that reason alone the paltry fine of $40 000-00 is so inadequate as to induce a sense of shock in the mind of the proverbial reasonable man. In my view this was an appropriate case crying out for a community service related penalty or at the very least a hefty fine coupled with a wholly suspended term of imprisonment.

That being the case I am unable to certify these proceedings as being in accordance with real and substantial justice**. I accordingly withhold my certificate**.

BHUNU J: ……..

CHATUKUTA J: agrees,…….