

THE STATE

VERSUS

MHLUPHEKI NDLOVU

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 22 JULY 2010

Review Judgment

CHEDA J: The above case was forwarded to me for review.

It has come to my attention that there are two issues to be dealt with.

The review cover recorded that the accused was charged with (several counts) of rape and was however sentenced to 12 years imprisonment on each count totalling 36 years imprisonment of which 5 years was suspended for 5 years on the usual conditions. The judgment indicates that accused was convicted of 3 counts of rape which counts of rape accused did not plead to. According to the record accused was charged with one count this is what he pleaded not guilty to and is recorded at the back of the charge sheet.

In addition to this, there is no verdict recorded on the back of the charge sheet. This record is not a true reflection of what took place during a trial as there are numerous errors. A court record must be unambiguous and therefore be able to speak for itself without more. These are very serious contradictions on this record so much so that it is extremely difficult to say precisely what took place. Since there is doubt regarding to the charges, it is only safe to confirm one conviction of rape only.

The conviction is therefore confirmed but the sentence is set aside and substituted by the following.

15 years imprisonment of which 3 years imprisonment is suspended for 5 years on condition accused does not within that period commit any offence of which sex is an element for which upon conviction accused is sentenced to imprisonment without the option of a fine.

Effective-12 years imprisonment.

Cheda J.....

Kamocha J agrees.....