KUDZANAI VHERU
and
MAXWELL CHIROMBO
and
KUDAKWASHE ZVAKARIMWA
and
CHAGU FOROMA
and
SIMBARASHE CHIMAMBO
and
STANLEY CHIKOSHA
and
JOSHUA MASHIRI
and
HERI CHIKUKWA
and
TAPIWA MAKAMBA
and
MUPAMBI ALBERT
AND
ARNOLD MURINGAI
and
MATANÁNI RANGARIRAI
and
ISAAC GANDI
and
MUNETSI CHITIVE
and
MANGEZI CHAMUNORWA
and
GWAIMANI ABRIEL
and
GONZO ENOCK CHENGAOSE
and
CARLINGTON CHIMUNZA
and
DAVID GIYA
and
JULIUS MASHONGANYIKA
and
MOYO WILFRED
and
FRISIOS MANYIKA
and
EDSON MAUNDU
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE and BERE JJ
HARARE, 8 May 2014

Criminal appeal

E Jena, for the appellants
E Makoto, for the respondent

BERE J: On 4 December 2009 and in Chiwarika Village, Shamva the appellants who were police officers of different ranks went on a rampage, rounding up villagers and taking turns to assault them in various forms.

They were arraigned and brought to court on a charge of assault as defined in s 89 Criminal Law (Codification and Reform Act [*Cap 9:23*], convicted and sentenced each to 6 months imprisonment.

This appeal is against both conviction and sentence, it being the appellants' case that their conviction was not supported by the evidence before the lower court and therefore sought to persuade this court to find them not guilty and acquitted.

It is also their case that even if this court were to return a verdict of guilty, the court should exercise its discretion on sentence and reduce the sentence imposed to either a fine or community service.

This appeal is opposed by the prosecution. It is their position that the whole case was properly handled by the lower court and that there is no merit in the appeal.

A reading of the trial magistrate's judgement clearly shows that he made a thorough assessment of the evidence that was presented to him and that he was able generally to link all the appellants to the commission of the offence largely aided by the evidence accepted through admissions and complemented by the evidence led by the prosecution.

It should be noted that all the appellants through the admissions admitted to have participated in going to Chiwarika Village to collect complainants in this case.

A common thread running through the evidence of the witnesses is that the offence was masterminded by accused 1 and 2 with the rest of the officers participating in various degrees in the commission of the assault which included forcing the complainants to remove their clothes and having water poured on them and having their faces drenched in muddy water.

The evidence no doubt suggests that when the officers acted in the manner they did they were acting in common purpose.

The learned magistrate went out of his way to deal with the defence of obedience to lawful orders which seems to be the bedrock of the appellants' appeal. In a well reasoned analysis of this defence the court concluded, rightly in our view, that the defence was inapplicable in this matter in that the orders were so manifestly illegal that a reasonable person in the appellants' position could not have felt inclined or obliged to obey such an instruction.

We are in total agreement with the findings of the lower court that in so acting all the appellants were correctly found to have been acting in common purpose in the commission of this offence.

Equally true is the fact that the court *a quo* made a detailed consideration of the submissions made in both mitigation and aggravation and concluded that given the legitimate expectations of the citizenry the appellants abused their positions by traumatising the complainants for no good reason.

The finding by the trial court that the conduct of the appellants was so reprehensible to warrant the imposition of a custodial sentence as opposed to other forms of punishment like a fine or community service cannot be faulted.

This case in our view represents one of the worst forms of police brutality and the sentence imposed fits the crime and must not be interfered with. We do not subscribe to the suggested imposition of community service in this case as advocated by the appellants' counsel.

The conduct by the appellants was a clear demonstration of abuse of police power. The very idea of rounding up the villagers and treating them in the manner described was reminiscent of the police brutalities that characterised this country before independence. Not even a fine would have been appropriate in this case.

Such sentences would have left in the minds of the complainants the feeling that the appellants by virtue of their position were immune from proper retribution. The appellants chose to dive into the deeper end they must carry their cross.

Consequently the appeal against both conviction and sentence must fail. The appeal is dismissed.

BERE J: _____

HUNGWE J agrees:_____

Jena and Associates, appellants' legal practitioners
Attorney General's Office, respondent's legal practitioners