

BERNARD CHINANGA
versus
THE STATE

HIGH COURT OF ZIMBABWE
BERE AND TAGU JJ
HARARE, 25 February 2014

Criminal appeal

S. Murambatsvina, for the appellant
A. Makoto, for the respondent

BERE J: This matter originates from Kadoma Magistrates Court where the appellant appeared, was charged and convicted of contravening s 89 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] and sentenced to 16 months imprisonment of which 6 months imprisonment were suspended for 5 years on the usual conditions of future good behaviour.

The appellant has sought redress to this court by appealing against both conviction and sentence.

The court *a quo* has been attacked for failing to fully comply with the provisions of s 271 (3) of the code in that there was no recording of the explanation given to the appellant as regards the charge and the essential elements constituting that charge.

Our courts are courts of record and every explanation given to an unrepresented accused person must be reflected on record. The Appeal Court must not be left to wonder whether or not the provisions of the law have been complied with. Where doubt is created as to whether or not compliance has been adhered to, that doubt must be read against the trial magistrate who has all the machinery at his disposal to fully comply with the legal requirements. In the instant case there is every indication that the presiding Magistrate did not fully comply with the provisions of the law as evidenced by the absence of any explanation on record as to how the medical report became part of the record of proceedings.

There is every indication in this record of proceedings that the medical report which obviously had a bearing on the sentence of the appellant was smuggled into the record of proceedings without following the very basic requirements of s 278 (1) and (11) of the Criminal Procedure and Evidence Act [*Cap 9:07*].

It is clear that the injuries reflected on the medical report are not consistent with what the appellant presumably pleaded to. The appellant's limited plea shows that he admitted to having assaulted the complainant with clenched fists yet the medical report makes reference to injuries having been caused by a sharp instrument.

It is not possible that if both the presiding Magistrate and the prosecutor were alert, the appellant would have been convicted of the offence charged as alleged.

The inconsistencies which are apparent in this case leaves the Appeal Court at large on the issue of the conviction and it is not even necessary to consider the question of sentence because that sentence clearly followed a wrong conviction.

The conviction and sentence are set aside and the matter is remitted to the court *a quo* for trial *de novo* before a different Magistrate.

Messrs Jarvis.Palframan, appellant's legal practitioners
Attorney General's Office, respondent's legal practitioners

BERE J _____

TAGU J agrees _____