

IN THE COURT OF APPEAL OF ZAMBIA

APPEAL 163/2020

HOLDEN AT KABWE AND NDOLA

(Criminal Jurisdiction)

BETWEEN:

LEONARD KAONGA

AND

RESPONDENT



APPELLANT

THE PEOPLE

CORAM: Mchenga DJP, Majula and Muzenga JJA

On 19th May 2021 and 18th November 2021

For the Appellants: H. M. Mweemba, Acting Director,
Legal Aid Board

For the Respondent: C. Kabwela, Senior State
Advocate, National Prosecutions
Authority

J U D G M E N T

Mchenga, DJP, delivered the judgment of the Court.

CASES REFERRED TO:

1. Godfrey Chimfwembe v The People SCZ/9/145/2013
2. Robson Chizike v The People CAZ Appeal No. 94/2020
3. Machipisha Kombe v The People [2009] Z.R. 282
4. Elvis Mweemba v The People S.C.Z Appeal No. 386 of
2013

LEGISLATION REFERRED TO:

- 1.The Penal Code, Chapter 87 of the Laws of Zambia
- 2.The Juveniles Act, Chapter 53 of the laws of Zambia

1. INTRODUCTION

1.1.This appeal emanates from the judgment of the High Court (Limbani, J.), delivered in Kabwe on 28th February, 2020.

1.2.The appellant initially appeared before the Subordinate Court (Hon. E. Banda), on a charge of Defilement of a Child, contrary to **section 138(1) of the Penal Code**. The allegation was that 6th October 2019, at Kapiri Mposhi, he had unlawful carnal knowledge of a girl who was under the age of 16 years.

1.3.He denied the charge and the matter proceeded to trial. At the end of the trial, he was convicted and committed to the High Court for sentencing.

1.4.In the High Court, he was sentenced to 20 years imprisonment with hard labour.

1.5.This appeal is against the conviction only.

2. CASE BEFORE THE TRIAL COURT

- 2.1. On the 6th of October 2019, prosecutrix's mother left her home in Kapiri-Mposhi's Chikayeba Compound, at about 07:00 hours. The prosecutrix, who at the time was aged 12 years, was left home with her siblings.
- 2.2. That morning, the appellant, who lived in a nearby house, approached the prosecutrix with a bucket. He offered to pay her K2.00 if she drew water for him and took it to his house. She agreed.
- 2.3. She drew the water and took the bucket of water to his house. She placed it at his door step and demanded the K2.00. she had been promised. The appellant told her that he could only pay her if she took the bucket inside the house.
- 2.4. The prosecutrix entered the appellant's house and the appellant, who was in the bedroom, came out and grabbed the prosecutrix. He took her to his bedroom and had sexual intercourse with her.

- 2.5. After the act, he gave her K2.00. He also made her exit the house through a door different to the one she had used to enter the house.
- 2.6. At about 17:00 hours, the prosecutrix's mother returned home. She noticed that her daughter was walking with a limp. On being questioned, the prosecutrix told her that she had been defiled by the appellant.
- 2.7. She examined the prosecutrix and confirmed that it was the case.
- 2.8. The following day she reported the matter to the police where she was issued with a medical report form. The fact that the prosecutrix was defiled was confirmed at Kapiri Mposhi Urban Clinic. Thereafter, the appellant was arrested and charged with the offence of defilement.
- 2.9. In his defence, the appellant said on 6th October 2019, he went to draw water from the well. When he returned, the prosecutrix came to his house to ask for a broom and he told her to come in and get it.

2.10. According to the appellant, it was one of his neighbours, who he was not in good terms with, who reported to the prosecutrix's mother that he had defiled her when he saw the prosecutrix coming out of his house.

2.11. However, he maintained that he did not defile the prosecutrix.

2.12. The trial magistrate found that the medical report confirmed that the prosecutrix had been defiled. He pointed out that he believed the prosecutrix even if her evidence was not corroborated.

2.13. He found that the appellant's admission that the prosecutrix entered his house on the material day and left using a different door from the one she initially entered from and that he gave her a K2.00, amounted to 'something more' which confirmed that the prosecutrix's allegation against the appellant was true.

3. GROUND OF APPEAL AND ARGUMENTS IN SUPPORT

3.1. The sole ground of appeal is that the evidence identifying the appellant as the offender was not corroborated.

3.2. In support of this ground of appeal, Mr. Mweemba submitted that since the prosecutrix was aged 12 years old at the time she testified, her evidence on the identity of the appellant, as the offender, required to be corroborated in line with **section 122(b) of The Juveniles Act**. He referred to the cases of **Godfrey Chifwembe v The People¹** and **Robson Chizike v The People²** in support of his arguments.

3.3. He also argued that the odd coincidences relied upon by the trial court, did not satisfy the requirements of corroboration as a matter of law, as envisaged by the provisions of **section 122(b) of the Juveniles Act**.

3.4. He indicated that he was alive to the guidance given in the case of **Machipisha Kombe v The People³**, but

still maintained that the prosecutrix testimony was not corroborated.

4. ARGUMENTS IN RESPONSE TO THE APPEAL

4.1. Mrs. Kabwela, submitted that the prosecutrix evidence, identifying the appellant as the offender, was corroborated by the appellant's testimony himself. His evidence confirmed the material issues stated by the prosecutrix and as such provided independent evidence which was corroborative.

4.2. She drew our attention to the case of **Elvis Mweemba v The People**⁴ and submitted that the trial court was on firm ground when it found that there was no evidence to suggest the intention to falsely implicate.

5. CONSIDERATIONS OF THE APPEAL AND COURT'S DECISION

5.1. First of all, the trial magistrate found that the appellant's admission that he gave the prosecutrix K2.00. That finding is not supported by the

evidence. What the appellant admitted was that the prosecutrix entered his house.

5.2. In the case of **Machipisha Kombe v The People**³, Mwanamwambwa, JS, delivering the judgment of the court, said the following on corroboration:

'Law is not static, it is developing. There need not now be a technical approach to corroboration. Evidence of "something more", which, though not constituting corroboration as a matter of strict law, yet satisfy the Court that the danger of false implication has been excluded and that it is safe to rely on the evidence implicating the accused. Odd coincidences constitute evidence of 'something more'. They represent an additional piece of evidence which the Court is entitled to take into account. They provide a support of the evidence of a suspect witness or an accomplice, or any other witness whose evidence requires corroboration. This is the less technical approach as to what constitutes corroboration: (See Phiri E. and Others v The People (4). Further, odd coincidences can, if unexplained, be supporting evidence: (See Mkandawire and Others v The People)'

5.3. Going by this decision, the position of the law is now that 'something more' or 'odd coincidences',

can be corroborative to evidence admitted by virtue of **section 122 of the Juveniles Act.**

5.4. The Supreme Court took the same position in the cases of **Godfrey Chimfwembe v The People¹** and **Elvis Mweemba v The People⁴.**

5.5. In this case, the trial magistrate erred in law when he found that although there was no corroborative evidence, there were 'odd coincidences' or 'something more'. Since odd coincidences or something more can provide corroborate evidence, the trial magistrate should have found that the prosecutrix's evidence was in fact corroborated.

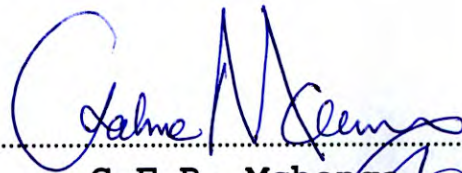
5.6. The appellant's admission that the prosecutrix entered his house on the material day and exited using a different door, amounted to something more and corroborated the prosecutrix's evidence identifying him as the offender.

5.7. We find no merit in the sole ground of appeal and we dismiss it.

6. VERDICT

6.1. The sole ground of appeal having been unsuccessful, this appeal collapses. We dismiss it and uphold the appellant's conviction.

6.2. We also uphold the sentence of 20 years imprisonment with hard labour. It shall run from the 23rd of October 2019.



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C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT



.....
B.M. Majula
COURT OF APPEAL JUDGE



.....
K. Muzenga
COURT OF APPEAL JUDGE