

IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT KABWE and LUSAKA
(Criminal Jurisdiction)

Appeal No 239/2020

BETWEEN:

AARON MUMBA



APPELLANT

AND

THE PEOPLE

RESPONDENT

CORAM: Mchenga DJP, Kondolo SC and Banda-Bobo, JJA

On 19th October 2021 and 23rd March 2022

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

For the Respondent: M. Chipanta-Mwansa, Deputy Chief State
Advocate, National Prosecution 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 of 2013

2. Robson Chizike v The People CAZ Appeal No. 94 of 2020
3. Machipisha Kombe v The People[2009] Z.R. 28

LEGISLATION REFERRED TO:

1. The Criminal Procedure Code, Chapter 87 of the Laws of Zambia

1. INTRODUCTION

- 1.1. The appellant, appeared before the Subordinate Court (Hon. F.B.M. Ngosa), charged with having committed an Unnatural Offence, contrary to **section 155(a) of the Penal Code**.
- 1.2. He denied the charge and the matter proceeded to trial. At the end of the trial, he was convicted of the offence and the matter committed to the High Court for sentencing.
- 1.3. In the High Court (Kamwendo, J.), sentenced him to 45 years imprisonment, with hard labour.

- 1.4. He has appealed against conviction, and the sole ground of appeal, is that he was convicted on the uncorroborated evidence of a minor.

2. CASE BEFORE THE TRIAL COURT

- 2.1. On the 25th of May 2020, the prosecutrix who lived with her mother in Kabwe's Makululu Compound, complained of stomach pains. She was 6 years old at the time.
- 2.2. The following day, on 26th May 2020, when she went to the toilet, it was observed that she had passed "whitish stuff", which appeared like semen.
- 2.3. On being examined by a doctor, it was confirmed that she had been penetrated in the anus.
- 2.4. The prosecutrix, only identified the appellant, as the offender, after being interviewed by a counsellor. She told the counsellor that the appellant had sexual intercourse with her against the order of

nature. She disclosed that it was in the appellant's room, in the same yard, where they lived in a semi-detached house.

- 2.5. A police officer who visited the appellant's room, confirmed that the prosecutrix description of the set up in the room, matched what he saw.
- 2.6. The trial magistrate found that the medical report confirmed the sexual act, while the identity of the appellant was confirmed by the prosecutrix's description of the setup in his bedroom.

3. ARGUMENTS IN SUPPORT OF AND AGAINST APPEAL

- 3.1. In support of the sole ground of appeal, Mr. Mweemba referred to the cases of **Godfrey Chimfwembe v The People**¹, **Robson Chizike v The people**² and **Machipisha Kombe v The People**³ and submitted that the appeal be allowed because the prosecutrix's identification of the appellant was not corroborated.

3.2. Mrs. Chipanta-Mwansa does not support the conviction. She pointed out that the trial magistrate having noted that the prosecutrix could have been familiar with the setup in the appellant's room, because she used to play with the appellant's children, her description of his room could not be corroborative.

4. COURT'S CONSIDERATION OF THE APPEAL

4.1. As correctly pointed out by Mrs. Chipanta-Mwansa, the evidence relied on by the trial magistrate, as corroborative evidence, was of no probative value. Since the prosecutrix used to frequent the appellant's room, there was nothing unusual with her description of the room.

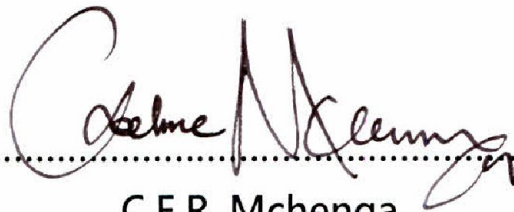
4.2. The evidence fell far short of the evidence envisaged as something more in the case of **Machipisha Kombe v The People**.³ The matter would have been different if she had never visited the appellant's house but was able to give an accurate description of the

appellant's room. In that case, it would have tended to confirm her evidence that he abused her in his room.

4.3. In the circumstances, we find the conviction to be unsafe and allow the sole ground of appeal.

1. VERDICT

1.1. The sole ground of appeal having been allowed, we set aside the conviction and quash the sentence of 45 years imprisonment.



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C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT



.....
M. M. Kondolo SC
COURT OF APPEAL JUDGE



.....
A. M. Banda-Bobo
COURT OF APPEAL JUDGE