

**NSONDO v THE PEOPLE (1974) ZR 110 (SC)**

SUPREME COURT 35

BARON AG CJ, GARDNER AG DCJ AND HUGHES JS

18th JUNE 1974

(Appeal No. 49 of 1974)

**Flynote**

**Criminal law - Sentence - Indecent assault - Corporal punishment - When appropriate.**

**Headnote**

The appellant was convicted of indecent assault. He accosted a woman and attempted to drag her into the bush for the purpose of intercourse, and in the course of the assault her clothes were torn. He was sentenced to two years' imprisonment with hard labour and twelve strokes.

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BARON DCJ

*Held:*

Corporal punishment should not be ordered in the case of an adult unless the offence is committed in circumstances of brutality as distinct from brutishness.

*R v Subulwa* IV N.R.I.R 61 applied. 5

Case cited:

(1) *R v Subulwa*, IV NRLR 61.

*Appellant in person.*

*D K Chirwa, Ag Senior State Advocate*, for the respondent.

**Judgment**

**Baron Ag CJ:** delivered the judgment of the court: 10 The appellant was convicted of indecent assault on a female and sentenced to two years' imprisonment with hard labour and twelve strokes of a cane. The circumstances of the alleged offence were, shortly that the appellant accosted a twenty - year - old female when she was on her way to her house and attempted to drag her into the bush for the 15 purpose of having intercourse with her. In the course of this assault the complainant's clothes were torn. The evidence was more than sufficient to justify the conviction, and the appeal against conviction must be dismissed. As to sentence the term of imprisonment does not come to us with 20 a sense of shock, bearing in mind particularly that among the previous convictions of the appellant were two in 1971 of unlawful wounding and assault occasioning actual bodily harm. However, on the question of strokes we must draw attention to the case of *R v Subulwa* [1], a case which has been consistently followed by the courts of this country. In 25 that case it was held that corporal punishment should not be ordered in the case of an adult unless the offence is committed in circumstances of brutality as distinct from brutishness. On the facts proved in this case it cannot be said that the offence was accompanied by brutality. The order of the strokes will therefore be set aside. 30

*Appeal dismissed, save that order of strokes set aside*

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