STATE
versus
IAN CHAMUNORWA CHIGUTIRO

HIGH COURT OF ZIMBABWE
MUREMBA & MUTEVEDZI JJ
HARARE; 31 March 2025

Criminal Review

MUREMBA J: The accused, who engaged in sexual intercourse with his 15-year-old stepdaughter, was acquitted of two charges of rape as defined under Section 65 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (the CODE). Instead, he was convicted of the competent verdict of having sexual intercourse with a young person, in contravention of Section 70 of the CODE, on the basis that he enticed the complainant into engaging in consensual sexual intercourse with him.

[1] This court has repeatedly stressed to magistrates, the importance of proper record keeping during proceedings. Unfortunately, the learned regional magistrate who dealt with this case omitted to observe that elementary rule. It is therefore necessary to state it once more that it is essential to ensure that a record of proceedings is not only accurate but that it is also complete and correctly reflects the proceedings conducted before it is signed and certified as so. In this case, the review cover erroneously states that the accused was convicted of two counts of rape under Section 65 of the CODE, when in reality the accused was acquitted of the rape charges but convicted of two counts of engaging in sexual intercourse with a young person under Section 70. The review cover ought to accurately reflect the correct convictions to avoid misleading everyone concerned. Attention to detail in such matters is paramount.

[2] Regarding the evidence before the trial magistrate, I had no issues with her finding that the sexual intercourse between the accused and his stepdaughter was consensual. My concern lay in the fact that the accused, as the complainant's stepfather, was convicted of the competent verdict of having sexual intercourse with a young person under Section 70 of the CODE, rather than being convicted of the competent verdict of having

sexual intercourse within a prohibited degree of relationship as defined in Section 75 of the same Act. My view is that convicting the accused under Section 70 creates the impression that, had the complainant been over eighteen years, it would have been acceptable for the accused to engage in sexual intercourse with her. I raised this query with the learned trial regional magistrate, who responded as follows.

> "I do concede that the accused, besides having sexual intercourse with the complainant who is a step daughter and young person, the sexual intercourse was also within prohibited degree, thereby also committing an offence of sexual intercourse within a prohibited degree of relationship contravention of section75 (2) (b) of the Criminal Law (Codification and Reform).
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> I also do concede that it would not be appropriate for accused to sleep with his step daughter even when above 18 years. When I convicted accused on the competent verdict of section 70, I had all this in my mind and this is the reason why part of the condition of suspension of sentence he was not supposed to commit any other offence which is sexual in nature, hence issues of incest were also captured.
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> Having regard to the aggravating circumstances there was also need to pass a more deterrent sentence hence settling for a competent verdict which has a more deterrent penal provision as it was also a competent verdict in the given circumstances."

[3] The learned regional magistrate is correct in stating that both Section 70 and Section 75 of the CODE are competent verdicts when a person is charged with rape under Section 65 of the same Act. Both offences are included in the Fourth Schedule of the CODE as competent or permissible verdicts.

[4] Section 70 reads:

> "70 **Sexual intercourse or performing indecent acts with children between the ages of 12 and 18.**
> (1) Subject to this section, any person who—
> (a) commits upon a child any act involving physical contact that would be regarded by a reasonable person to be an indecent act; or
> (b) solicits or entices a child to have sexual intercourse with him or her or to commit any act with him or her involving physical contact that would be regarded by a reasonable person to be an indecent act;
> **shall be guilty of sexual intercourse or performing an indecent act with a child, as the case may be, and liable to a fine not exceeding level 12 or imprisonment for a period not exceeding ten years or both.**
> (2) It shall be no defence to a charge of sexual intercourse or performing an indecent act with a child to prove that he or she consented to such sexual intercourse or indecent act."

[5] This provision outlines the legal consequences for engaging in sexual or indecent acts with children aged above twelve but below eighteen years. Any physical contact with a child that a reasonable person would consider indecent is prohibited. Soliciting or enticing a child to engage in sexual intercourse or any indecent physical act is also prohibited. Contravening that law attracts a fine (of up to level 12), or imprisonment

(of up to 10 years), or both. The law is so, even where the child consents to the act. Consent cannot therefore be used as a defence to that charge. The provision is designed to protect children from abuse and sexual exploitation, emphasizing that individuals under the age of eighteen are not legally capable of consenting to sexual acts. It also underscores accountability for those who violate these protections. I recognize that the provision explicitly states that 'any person' who entices a child to engage in sexual intercourse with them shall be guilty of an offence. The term 'any person' applies indiscriminately, regardless of the person's relationship to the child. It must therefore also apply to individuals who are related to the child. On that basis, it can therefore be argued that charging a stepfather under this section does not suggest that the act would have been acceptable once the child turned eighteen years. Instead, the section is simply designed to protect young persons between the ages of 12 and 18 from sexual exploitation and abuse, regardless of the perpetrator's identity or relationship to the child. The law is in place to ensure accountability for anyone who violates the protections to young persons, whether they are strangers, acquaintances, or relatives. In *The State v Tawanda Muwombi* HH 164-16 at page 3, I said;

> "The reason why it is a crime to have sexual intercourse with a consenting young person is that the law seeks to protect young persons from sexual exploitation by older persons. The law also seeks to protect young persons against the harmful consequences of early sexuality such as early pregnancies and the contracting of sexually transmitted diseases."

[6] On the other hand, s 75(2) of the CODE which prohibits sexual intercourse within prohibited degrees of relationship reads that:

> "S 75(2) Where sexual intercourse takes place between
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> (a) a parent and his or her natural child, whether born in or out of wedlock, or adopted child, whether the child is under the age of eighteen years or not; or
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> (b) a step-parent and his or her step-child, whether the step-child's parent and step-parent are married under the Marriage Act [Chapter 5:11] or the Customary Marriages Act [Chapter 5:07], or are parties to an unregistered customary law marriage, and whether or not the child was over the age of eighteen years at the time of the marriage; or
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> (c) a brother and sister, whether of whole or half-blood; or
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> (d) an uncle and his niece; or
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> (e) a grand-uncle and his grand-niece; or

(f) an aunt and her nephew; or

(g) a grand-aunt and her grand-nephew; or

(h) a grandparent and his or her grandchild; or

(i) subject to subsection (3), any person and his or her first or second cousin; or

(j) any person and an ascendant or descendant of his or her spouse or former spouse, whether the person and his or her spouse or former spouse are or were married under the Marriage Act [Chapter 5:11] or the Customary Marriages Act [Chapter 5:07], or are or were parties to an unregistered customary law marriage; or

(k) any person and his or her ascendant or descendant in any degree; or

(l) any person and a descendant of a brother or sister, whether of whole or half-blood;

and either or both of the parties know or realise that there is a real risk or possibility that they are related to each other in any of the foregoing degrees of relationship, either or both parties to the intercourse, as the case may be, **shall be guilty of sexual intercourse within a prohibited degree of relationship and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both.**

[7] This provision outlaws sexual intercourse between persons who are closely related by blood, marriage, or adoption. Sexual intercourse is forbidden between persons in the specified familial relationships. If either or both parties are aware or realize there is a possibility of being related in any of these degrees, they are considered to have contravened the provision. Violators may face a fine (up to or exceeding level 14), imprisonment (up to 5 years), or both. The objective of that law is to prevent sexual relationships within prohibited degrees of kinship, safeguarding familial integrity and addressing breaches of societal norms. The ultimate aim is to preserve the integrity of family structures. By criminalizing sexual intercourse within prohibited degrees of relationships, the law enforces societal standards regarding appropriate conduct and familial boundaries. The rationale for the offence is that it is morally wrong or taboo for people who are closely related to have sexual relations.[1]

[8] From the foregoing discussion, I conclude that Section 70 addresses the question of sexual intercourse or indecent acts involving young persons aged 12 to 18, aiming to protect them from exploitation, irrespective of their consent and regardless of relationships. Charges under this section focus primarily on the victim's age and the

[1] *The State v Tawanda Muwombi* HH 164-16 at page 4.

nature of the act. In contrast, Section 75 specifically targets sexual intercourse within prohibited degrees of relationship, such as between a parent and child, regardless of age. Charges under this section focus primarily on the relationship between the parties and the sexual act. The focus of Section 70 is on protecting young persons, while Section 75(2) addresses the specific dynamics of familial relationships. Together, the two provisions reinforce the broader protections against abuse and exploitation. Consequently, in a case where a stepfather engages in consensual sexual intercourse with his 15-year-old stepdaughter, the situation involves an overlap between these two legal provisions. The critical question is: which provision should take precedence?

[9] As already stated earlier, when I queried the learned regional magistrate about the conviction under Section 70, my concern was that it implied that the stepfather could have waited until his stepdaughter turned 18. Thereafter, he could engage in consensual sexual intercourse with her, because Section 70 prohibits such acts with young persons aged 12 to 18. In the case of *The State v Tawanda Muwombi supra* at page 4, I said;

> "It is my considered view that in a case where the parties are related in a prohibited degree of relationship, like in the present case, the appropriate charge is s 75, not s 70. I have reservations with s 70 because of the rationale behind the offence under that section which is to protect young persons from sexual exploitation by older persons. What s 70 means is that when the young person becomes of age, the parties involved will be allowed to engage in sexual relations as they are not related in a prohibited degree of relationship. Sexual intercourse between them is permissible, the only hindrance is that the other party is not yet allowed at law to engage in sexual relations because of his or her tender age. Once that person attains the age of 16 the two parties can perfectly or lawfully engage in sexual relations. Therefore, if a father is charged under this section, to me it is tantamount to saying, "Father you did wrong by having sexual intercourse with your underaged daughter."

[10] Having regard to the trial magistrate's response to my query and a deeper analysis of sections 70 and 75(2), I reflected on the matter and I am persuaded that technically both sections are applicable although Section 75(2) would be better suited to address sexual intercourse between stepfather and stepdaughter because it specifically prohibits sexual acts within familial relationships, regardless of the child's age. This provision highlights the seriousness of the offence, emphasizing the breach of trust, societal norms, and the abuse of power inherent in such cases. By focusing on the familial bond rather than the daughter's age, Section 75(2) more effectively captures the gravity of the violation and reinforces the illegality of sexual conduct within prohibited degrees of kinship. Additionally, Section 75(2) underscores the parental

responsibilities inherent in the role of a stepfather within the familial context. While Section 70 applies because the stepdaughter is under 18 and legally incapable of consenting to sexual acts, it does not fully address the unique dynamics of the familial relationship. Convicting under Section 70 may inadvertently suggest that the act would have been permissible if the stepdaughter were older, which is not the case. Section 75(2) eliminates such ambiguity and ensures that the offence is addressed within the context of the familial bond, thereby upholding the broader legal and moral standards. In *The State v Tawanda Muwombi supra*, the accused, aged 39, engaged in consensual sexual intercourse with his 15-year-old daughter on two occasions. From the outset, the accused faced two charges: one count of contravening Section 70 of the CODE and another count of contravening Section 75 of the CODE. It was peculiar that the State opted for different charges. Upon reviewing the matter, I remarked as follows:

> "Under s 70, in canvassing the essential elements of the offence, all that is necessary to establish is that there was sexual intercourse or an indecent act between an older person and a young person and that the young person consented to it. The relationship that exists between the two parties is not an issue yet under s 75 the relationship between the two parties is very important and is an essential element or ingredient of the offence. The issue of age is immaterial. In the case involving a parent and a child the offence is committed irrespective of the age of the child. Whether the child is below or above the age of 16 is neither here nor there. In short, the difference between the two offences is that while under s 70 the prime consideration is the issue of the age of the young person, under s 75 the prime consideration is the relationship between the parties. It is in light of this argument that I believe that s 75 is the appropriate charge in cases of incest. In the present case, the accused should have been charged with having sexual intercourse with the complainant within a prohibited degree of relationship as defined in s 75." (My underlining.)

[11] In *casu*, the learned regional magistrate, in her response to my query, acknowledged the applicability of both Section 70 and Section 75(2). However, she explained that she opted to convict the accused under Section 70 due to the aggravating circumstances and the need to impose a more deterrent sentence. Her decision was guided by the desire to apply a provision with stricter penal consequences. Ultimately, the choice of which section to invoke was influenced by the relative severity of the penalties, with Section 70 offering a harsher punishment. While Section 75(2) may appear more appropriate given its focus on the familial relationship, the magistrate prioritized the stricter penal provisions of Section 70 to emphasize the gravity of the offence. Her approach reflects an intent to ensure that the punishment sufficiently addresses the seriousness of the conduct. Given her reasoning, and considering that both

Sections 70 and 75 are competent and permissible verdicts under Section 65, I cannot fault her decision. Accordingly, I hereby confirm the accused's convictions under Section 70 of the CODE as being in accordance with real and substantial justice.

[12] However, before concluding this matter, I note the following observations. The penalty under Section 70 is a fine not exceeding Level 12 or imprisonment for a period not exceeding ten years, or both. In comparison, Section 75(2) prescribes a penalty of a fine up to or exceeding Level 14 or imprisonment for a period not exceeding five years, or both. That the fine for contravening section 75(2) is higher than that for contravening s 70 suggests that the legislature viewed contravening section 75 (2) as a more serious offence than contravening section 70. But for inexplicable reasons the length of imprisonment for the offences is reversed. Section 70 attracts more severe imprisonment than section 75(2). Needless to state, section 70 therefore becomes a more serious offence than section 75(2). What clearly lacks in that law is its failure to recognise that a person in the circumstances of the accused in this case who has sexual intercourse within a prohibited degree of relationship with a child under the age of eighteen years commits two offences at once. His situation calls for a more severe punishment than someone who engages in sexual intercourse with a child whom he is not related to within a prohibited degree of relationship. In cases where the perpetrator engages in sexual intercourse with a young person within a familial relationship, the breach of trust and abuse of power are particularly egregious. For these reasons, I find the penalty provided under section 75(2) wholly inadequate to cover the circumstances of the accused in this case. It would have been more logical to make provision for stiffer sentences under section 75(2) for persons who engage in sexual intercourse with children whom they are related to within prohibited degrees of relationship. It is different for adults to have sex within a prohibited degree of relationship and an adult having sex with a child within a prohibited degree of relationship. Those two scenarios ought to be punished differently. In that regard, I can only call upon the legislature to revise and enhance the penalty under Section 75(2), to ensure that it specifically speaks to the aggravated nature of the crime where an adult has sexual intercourse with a child that he /she is related to. Strengthening the penalties under Section 75(2) would enable judicial officers and prosecutors to rely on this provision in cases involving closely

related parties, rather than resorting to Section 70 solely on the basis of its stricter penal provisions. As already stated, the danger in section 70 is that it appears like it blesses the incestuous relationship if the child was above the age of 18. Revising and steepening the penalty under s 75(2) will ensure that the law adequately emphasizes the unique and severe nature of offences within familial relationships while maintaining a focus on the protection of young persons.

[13] In my query, to the regional magistrate, my second question was whether the sentence she imposed on the accused related to both or only one of the counts because the record of proceedings was silent on that aspect. I did not want to assume that the sentence was for both counts. In response, the regional magistrate clarified that the sentence was indeed for both counts. She said:

> "I do concede that I did not indicate on record that the court treated both counts as one for purposes of sentence."

The record reflects that for both counts, the accused was sentenced as follows.

> "6 years imprisonment of which 2 years imprisonment is suspended on condition accused does not during that period commit any offence involving having sexual intercourse with young persons or sexual in nature and for which will be sentenced to imprisonment without the option of a fine upon conviction. In addition, another 5 years imprisonment is imposed in terms of Section 70(a) for deliberate infection of a child."

[14] There are several anomalies with this sentence. The first is the trial magistrate's failure, despite being a regional magistrate, to explicitly indicate in the record of proceedings that the sentence was imposed for both counts. A record of proceedings must speak for itself. That must be an elementary aspect to understand particularly for a judicial officer at the pinnacle of the magistracy. Reviewing judges and other interested persons cannot be expected to infer that the sentence imposed applies to both counts in a case where the accused was convicted on two separate counts.

[15] The second anomaly pertains to the first part of the sentence, which reads:

> "6 years imprisonment of which 2 years imprisonment is suspended on condition accused does not during that period commit any offence involving having sexual intercourse with young persons or sexual in nature and for which will be sentenced to imprisonment without the option of a fine upon conviction."

The sentence is unclear in two respects. Firstly, it does not specify the period for which the 2 years of imprisonment, suspended on condition of future good behaviour, is suspended. Was the suspension intended to last for the rest of the accused's life? S 358 (2) (b) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] permits a suspension for a period not exceeding 5 years. In this case, however, the period of suspension was omitted entirely, creating ambiguity. Secondly, the portion that reads, *"on condition accused does not during that period commit any offence involving having sexual intercourse with young persons or sexual in nature and for which will be sentenced to imprisonment without the option of a fine upon conviction*," lacks clarity and coherence. It is not explicitly clear what the condition of suspension entails, leaving the sentence open to interpretation. The wording fails to precisely and coherently define the parameters of the condition tied to the suspension of imprisonment.

[16] The omissions and lack of clarity in the sentence undermine its coherence and raise questions about its enforceability and alignment with legal provisions. As I have already stated, it is concerning that this sentence was passed by a regional magistrate, who not only scrutinizes the work of magistrates in lower ranks but also plays a pivotal role in training and guiding them. This raises an important question: is the guidance and training provided to magistrates under her mentorship adequately addressing such critical aspects of judicial proceedings? The responsibility entrusted to a regional magistrate is significant, and is crucial that the leadership and oversight they provide continue to uphold the highest standards in judicial proceedings.

[17] The third anomaly lies in the manifest leniency of the sentence. A 39-year-old stepfather engaging in consensual sexual intercourse with his 15-year-old stepdaughter—not just once, but on two occasions warrants a far more severe penalty. The significant age gap of 24 years, coupled with the familial relationship and the fact that the stepdaughter is a minor, underscores the gravity of the offence. This is not merely a breach of the law but a profound violation of trust, moral standards and duty inherent in the parental role of a stepfather. The magistrate even had this to say in her sentencing judgment.

> "The accused person took advantage of the vulnerability of the complainant. He knew that she was somebody who really wanted to go to school but there was no one to pay for her school

> fees. She would be constantly chased away from school for not paying her school fees. Complainant then resorted to come and reside with her mother and accused person the step father told her that her plight would be resolved. Accused person would then use that as an advantage to entice the complainant and in exchange would get sexual favours. The accused person also caused psychological harm to the complainant's mother. He made utterances as a way of making her feel pain by telling her that he was engaging sexually with her daughter. He also chased complainant's mother away from home in order to have full uninterrupted access to the complainant."

[18] The statutory penalty under s 70 of the Criminal Law Code is 10 years of imprisonment, with a presumptive penalty of 3 years for an offence committed in aggravating circumstances. Given the circumstances of this case, including the repeated nature of the offence and the exploitation of a vulnerable minor within a familial relationship, the imposed sentence fails to reflect the seriousness of the crime. To make matters worse the accused was HIV positive when he was engaging in sexual intercourse with the complainant. It is only fortunate that the complainant was not infected. The HIV results of both parties were tendered during the trial proceedings. The imposed sentence neither adequately addresses the breach of trust, the sexual exploitation and abuse of power nor serves as a sufficient deterrent to others who might contemplate similar actions. This was a particularly bad case which ought to have attracted a penalty nearing the maximum that can be imposed under the statute. A stiffer penalty way above the presumptive penalty of 3 years in each count would have been more appropriate to convey the gravity of the offence, uphold societal norms, and ensure justice for the complainant. The leniency of the sentence risks undermining public confidence in the judicial system's ability to protect minors and hold perpetrators accountable, particularly in cases involving such egregious abuse of power and trust.

[19] The third query that I raised with the learned regional magistrate was about the additional sentence that was imposed on the accused. The accused was sentenced to an additional 5 years' imprisonment for deliberate infection of the complainant with HIV in terms of s 70 (a). My query was premised on the fact that the record of proceedings does not show that the accused was charged for contravening s 70(a). I inquired on what basis the learned regional magistrate imposed this separate and additional sentence when the accused was not charged with the offence. In response the learned regional magistrate said:

> "Indeed, the accused was not charged separately for deliberately infecting that child with a sexually transmitted disease. I have revisited section 70A (5) and it tends to show that when the offender is charged and convicted for deliberately infecting a child with a sexually transmitted disease, sentence is imposed for such an offence. Such a sentence is not supposed to run concurrently with another sexual offence he would have been charged and convicted. I therefore erred when I imposed another sentence for deliberately infecting that child with a sexually transmitted disease because in my instance accused had not been separately charged with that offence. It was thus going to remain as an aggravating factor. (My underling)

[20] To begin with, the correct provision is s 70A and not s 70 (a) as reflected in the sentence imposed by the learned regional magistrate. The Criminal Laws Amendment (Protection of Children and Young Persons) Act, 2024 (Act 1 of 2024) provides in its section 5 that a new section was inserted after section 70 of the CODE and that the section inserted reads as follows.

> "70A Deliberate infection of child with a sexually transmitted disease
> (1) In this section—
> "sexually-transmitted disease" includes syphilis, gonorrhoea, herpes, HIV and all other forms of sexually-transmitted diseases.
> (2) Any person who—
> (a) knowing that he or she is suffering from a sexually-transmitted disease; or
> (b) realising that there is a real risk or possibility that he or she is suffering from a sexually-transmitted disease;
> intentionally infects any child with the disease, or does anything or causes or permits anything to be done with the intention or realising that there is a real risk or possibility of infecting the child with the disease, **shall be guilty of deliberately infecting that child with a sexually-transmitted disease and liable to a fine up to or not exceeding level fourteen or imprisonment for a period not exceeding five years or both.**
> (3) If it is proved in a prosecution that the person charged was suffering from a sexually-transmitted disease at the time of the crime, it shall be presumed, unless the contrary is proved, that he or she knew or realised that there was a real risk or possibility that he or she was suffering from it.
> (4) It shall not be a defence to a charge under subsection (1) for the accused to prove that the child concerned—
> (a) knew that the accused was suffering from a sexually transmitted disease; and
> (b) consented to the act in question, appreciating the nature of the sexually-transmitted disease and the possibility of becoming infected with it.
> (5) A court convicting a person for any crime constituting unlawful sexual conduct against a child shall, if it also convicts that person for deliberately infecting that child with a sexually-transmitted disease, not make any part of the sentence of imprisonment imposed for the latter crime run concurrently with any sentence of imprisonment imposed for the first-mentioned crime."

[21] The above provision addresses the deliberate infection of a child with a sexually transmitted disease (STD). It criminalises actions where a person, knowing or realizing the risk of having an STD, intentionally infects a child or engages in conduct that could lead to such infection. The section defines STDs broadly, to include syphilis, gonorrhoea, herpes, HIV, and other forms of sexually transmitted diseases. The accused must knowingly or recklessly infect the child or engage in

actions that pose a real risk of infection. If the accused is proven to have had an STD at the time of the offence, it is presumed they were aware of the risk unless proven otherwise. The child's knowledge of the accused's condition or consent to the act does not constitute a defence. If a person is convicted of a crime involving unlawful sexual conduct against a child and is also convicted for deliberately infecting that child with a sexually-transmitted disease, the sentence of imprisonment for the latter crime (deliberately infecting the child) must not run concurrently with the sentence for the first-mentioned crime (unlawful sexual conduct). In other words, this means that the sentences for these two crimes must be served one after the other, and not at the same time. This ensures that the perpetrator faces a more severe punishment for the combined offences.

[22] Clearly, a reading of Section 70A indicates that it is impermissible to sentence an accused person under this provision without formally charging them. The section does not allow for such an approach. A person must be specifically charged under Section 70A (2) for the court to convict and sentence them under the provision. The legal principle of fairness requires that the accused be informed of the charges against them and be afforded the opportunity to defend themselves before conviction, particularly if the charges are disputed. Sentencing a person under Section 70A without a corresponding charge is procedurally improper. The learned regional magistrate correctly acknowledged her error in imposing an additional sentence of five years' imprisonment on the accused for deliberately infecting his stepchild with a sexually transmitted disease. This decision was procedurally flawed as the accused had not been separately charged with and convicted of that specific offence. She appropriately noted that the issue of infecting the complainant would remain as an aggravating factor under the conviction for having sexual intercourse with a young person, as defined in Section 70.

[23] In light of the foregoing, I am unable to confirm the sentence imposed on the accused as being in accordance with real and substantial justice. Nonetheless, I will amend the sentence for contravening Section 70 to ensure it is both clear and enforceable. Furthermore, I will set aside the additional sentence of five years,

which should not have been imposed given the absence of a formal charge and conviction under Section 70A (2) of the Criminal Law Code.

[24] In the end, I order that:

a. The sentence imposed on the accused is corrected to read as follows:

"Both counts treated as one. 6 years' imprisonment of which 2 years' imprisonment is suspended for 5 years on condition the accused does not within that period commit an offence of a sexual nature and for which upon conviction he is sentenced to imprisonment without the option of a fine."

b. The additional 5 years' imprisonment imposed on the accused be and is hereby set aside.
c. The accused shall be recalled from prison and be advised of the corrected sentence.

MUREMBA J: …….

MUTEVEDZI J: …… **Agrees**