



IN THE HIGH COURT OF MALAWI
CRIMINAL DIVISION
CRIMINAL APPEAL CASE NO. 39 OF 2009

BETWEEN:

KINGSTONE KAMBALAME.....APPELLANT

-AND-

THE REPUBLIC.....RESPONDENT

Coram: Hon. Justice M L Kamwambe

Chimowa of counsel for the Appellant

Miss J. Phillipso of counsel for the Respondent

H. Amos, Interpreter

JUDGMENT

Kamwambe J

This is an appeal against sentence of the First Magistrate Court sitting at Dalton Court in Limbe. The Appellant, 33 year old Kingstone Kambalame, was on 3rd February 2009 convicted on his own plea of guilty and was sentenced to 12 years IHL. A plea of guilty is accepted as one of the strong mitigating factors regardless of the gravity of the offence unless, in the judgment of the court, such admission was made with arrogance and abandon. It is not good practice and it would not make good law that those who commit serious crimes should be deprived of this mitigating factor. In fact, a third of the sentence should be removed from the said sentence to benefit the offender.



The victim was 12 and she was made pregnant. The younger the victim the less lenient will the court be towards the offender. In my view, where the victim is less than 12 years, a sentence of 12 years and over will not be shocking. The Younger the victim the more punishment one should face. That the victim was left with a pregnancy is an aggravating factor because the pregnancy obviously disturbed the life of the victim physically and psychologically.

The court has to consider in favour of the offender the fact that he was a first offender. Again, it does not matter how grave the offence is, every first offender must benefit for being a first offender unless in rare situations I cannot think of now.

At 33 I cannot say that Appellant was a youthful offender, but it must be accepted that youthfulness is a band from 18 to 35 years of age. Men especially grow slowly mentally and at 35 they are at their prime experimenting with life.

The Appellant has cited some cases such as **Rep -v- Bamusi Mkwapatira** Confirmation Case No. 588 of 2008 where a sentence of 10 years IHL was reduced to 8 years IHL for defiling a 12 year old girl on the ground that the accused was a first offender. I am not sure whether pregnancy occurred in this case and the age of the accused is not known. In 2003 Justice Chimasula enhanced a sentence of 5 years to 8 years IHL for defiling a 10 year old girl in **Rep -v- Godfrey Ndamera** Confirmation case No. 314 2001. In **Rep -v- Gibson Kaligoza** Confirmation Case No. 1323 of 2005 the accused person pleaded guilty to defiling a 12 year old girl. He was a first offender and was sentenced to 5 years IHL which was enhanced to 7 years.

After weighing all the circumstances, including the issue of pregnancy, being a first offender young although older, plea of

guilty and the need to protect the girl child, I substitute the sentence of 12 years with one of 9 years. It is so decided.

Pronounced in Open Court this 4th day of January, 2017 at Chichiri, Blantyre.



M L Kamwambe

JUDGE