



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CONFIRMATION CASE NO. 89 OF 2021

(Being Criminal Case No. 1156 of 2020 before the Senior Resident Magistrate Court Sitting at Blantyre)

THE REPUBLIC

V

CHRISTOPHER CHIMTENGO

Coram: Justice Vikochi Chima

Mr Rodney Mkweza, Senior State Advocate

Mr Humphrey Panyanja, Senior Legal Aid Advocate

Mrs Moyo, Court Clerk

ORDER ON CONFIRMATION

Chima J

The accused was, after a full trial, convicted of defilement contrary to section 138 of the Penal Code. He was sentenced to twelve years imprisonment with hard labour. The conviction was confirmed. The reviewing judge, however, was of the view that the matter be set down to consider enhancement of the sentence. The convict had unlawful sexual intercourse with a thirteen year old girl. The house of the complainant was behind that of the accused. The complainant was friends with the accused's daughter. The accused was fond of following the complainant everywhere. He would sometimes send her brother to call her for him so that he meets her. He would send messages that the complainant should collect money from him. When the complainant would meet him, he would flash out money to entice her to follow him where he was going. The accused would be continually passing around the place where the girl would be chatting with her friends. One night, her parents being away from home, as she sat outside her house, the accused was coming from the bathroom and wearing only a bathing towel. He came and held her by the hand and led her into his house where he had sexual intercourse with her. The girl reported the incident to their landlord. The girl sustained an injury (a big notch on her hymen).

The accused is a full adult aged 35 years who fully comprehends that what he did ought not to be done and who must know the consequences of such acts as he did. In *Rep v Madalitso Keke*,¹ Mwaungulu J (as he then was) stated for offenders aged between 25 and 60, a sentencer should under normal circumstances allow the full rigour of the sentence that fits the crime on the assumption that at that age the offender is supposed to have developed a mature temperament and mature understanding about crime and consequences of it. All along, the accused had been flashing out money to the girl, his intention must have been to sleep with her. Clearly, he had been thinking of defiling the girl for quite some time. His behaviour is quite deplorable. The girl was psychologically disturbed as evidenced by the complaint she made to their landlord. The psychological effects will be with her for quite a long time. The girl is aged thirteen. The convict is a first offender.

The court will not alter a sentence on the ground that it would have imposed a somewhat different sentence itself. The sentence must be manifestly excessive or inadequate in view of all the circumstances of the case, or it must be wrong in principle before the High Court will intervene.² In this case, I see that the magistrate weighed all the factors properly and imposed the twelve year sentence which I think is right. I thus confirm the sentence also.

Made in open court this day the 10th of September 2021


Justice Vikocho Chima

¹ Confirmation Case No 404

² *Ali Mahomed v Rep* [1971-72] ALR Mal 16 at 17 para 40