

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CONFIRMATION CASE NO. 577 OF 2000**

**THE REPUBLIC
Versus
GANIZANI LAYELO**

From the Second Grade Magistrate's Court at Chiradzulu Criminal Case No. 96 of 1996

CORAM: HON. JUSTICE A.C. CHIPETA

**Chimwaza (Miss), of Counsel for the State
Accused, Present and Unrepresented
Ngwata, Official Court Interpreter**

ORDER IN CONFIRMATION

The accused herein, Ganizani Layelo, was after full trial convicted in the court of the Second Grade Magistrate sitting at Chiradzulu of the offence of Rape contrary to Section 133 of the Penal Code. He was sentenced to 5 years imprisonment with hard labour. The learned reviewing Judge felt that the sentence erred on the lower side and that it required some enhancement. The case was thus set down for hearing on that basis.

Upon examining the record fully I am quite in agreement with my brother Judge that the sole question requiring a revisit in this case is that of the sentence passed. I too have no qualms about the conviction which I think was properly arrived at on sufficient and highly convincing evidence that the accused had a successful but forced coitus with the victim, Mary Maloya. The conviction the lower court entered against the accused is accordingly hereby endorsed and confirmed.

When the case was called in this court I did ask the accused person to show cause why the sentence should not be enhanced. He did not say anything of substance in answer to my question. Rather he was uttering statements inclining towards casting a doubt on his conviction when there was and there is no appeal against the said conviction.

On her part, the Principal State Advocate, Miss Chimwaza was in full accord with the sentiments

of the reviewing Judge. Placing reliance on the case of Rep -vs- Harrison Nyozani and Others Cr. C.C. 312 of 1995 (unreported) in which she said the High Court passed sentences of 6 years imprisonment with hard labour on each of three juveniles who took turns at raping a girl and that they were only saved from a 10 year sentence because of their virtually infant ages of only between 13 and 14 years, she advocated that the accused herein who is older and who on that day not only raped the victim girl, but also coached a friend, PWIV, to do the same should get a stiffer penalty than those boys got.

I am in full agreement with the views of both the reviewing Judge and the learned Principal State Advocate. The record discloses evidence of such serious threats that the girl had to succumb to being consecutively raped by two males without a break, with PWIV's rape taking place specifically at the command of the accused. It certainly appears to me that 5 years imprisonment with hard labour for such callous and lewd conduct is certainly grossly inadequate. I accordingly set aside that sentence and in lieu thereof enhance the accused's sentence to 7 years imprisonment with hard labour.

Pronounced in open Court this 23rd day of March, 2001 at Blantyre.

A.C. Chipeta

JUDGE