IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL APPEAL NO. 41 OF 2001

GRACE MAJAWA

versus

THE REPUBLIC

From the First Grade Magistrate's Court sitting at Blantyre, being Criminal Case 82B of 2000

CORAM: TEMBO, J.
Jumbe (Mrs), State Advocate
Chimwaza (Miss), State Advocate for the Respondent
Kamanga, Court Clerk

JUDGMENT

TEMBO, J. Grace Majawa was charged with the offence of indecent assault of a boy under the age of 14 years, contrary to Section 155 of the Penal Code, before the First Grade Magistrate sitting at Blantyre. The particulars of the charge were that during the month of August, 2000, at night and at Manase Township within the City of Blantyre, Grace Majawa unlawfully and indecently assaulted Charles Barnet, a boy under the age of 14 years. The accused had denied the charge and full trial ensued. At the end of the trial, the lower Court had found the accused guilty of the offence of indecent assault of a boy under the age of 14 years and, therefore, sentenced her to 18 months imprisonment with hard labour. Grace Majawa's appeal is against that conviction and sentence.

In the main, two grounds of appeal were relied on: that the judgment of the lower court was against the weight of evidence; and

that the lower court had erred in law in allowing inadmissible hearsay evidence.

In the view of the lower court, in particular as reflected at pages 74 to 77 of its judgment and record, the following facts were proved and as follows:-

> *"that the accused had offered a place to sleep to the complainant, PWI Charles, a boy who was under the age of 14 years then. That while sleeping at the accused house, the accused was having sex with PWI. That according to PWI's allegation the accused used to go to the sittingroom at night to where PWI was sleeping, take him to her bedroom and have sex with him. That when doing this the accused would tell PWI not to tell anybody, to keep it a secret as they were doing a family thing. That the boy's mother PW2 noticed on PWI's blankets that there were stains of blood mixed with pass and when she had PWI investigated she was told that the accused had been having sexual intercourse with PWI while he was sleeping in the accused house. That when the complainant, PWI, was taken to a private clinic he was diagnosed to have syphilis and was given medicine to treat it. That when he was sent to the hospital by Police it was difficult to find any disease as he was on treatment already. That the accused medical report shows that she does not have any sexually transmitted disease or ever had."*

Besides the foregoing, the lower Court had made the following finding of fact, at pages 78 and 80 of its record, relative to the requirement for corroborative evidence in sexual offences:

> *"It is trite law that in sexual cases there must be corroboration ... I now warn myself of the danger of convicting on uncorroborated evidence on this offence of indecent assault. I will look at the evidence before me so as to see clearly that even though there is no corroboration there was a likelihood that the offence of indecent assault was committed on PWI .... From*

prosecution evidence there is no corroboration but there are factors that might support PWI's evidence."

In the light of the decision of the Federal Supreme Court, in the case of **Makhanganya vs Regina** 1961-63 ALR Mal. 491, a court should seek corroboration of the evidence of a child of immature age; and as to who is a child of that age; the court held that children under 14 years should be regarded as of immature age, although maturity should be a matter of inquiry by the court in each case. In the instant case, the complainant, PWI, was such a child, being a boy below the age of 14 years. His testimony was, therefore, to be received by the lower court subject to the requirement of corroboration. This means that the lower court ought to have proceeded to convicting the accused on the basis of PW1'S testimony only if there was corroborative evidence. Was there any such evidence in the instant case to have justified the lower court's finding of guilt on the part of the accused?

On this point it is quite clear from the record of the lower court that besides the testimony of the complainant, PWI, alleging that the accused, herein appellant, had sexual intercourse with him, there is no other independent piece of evidence in support of that allegation. Yes, there would have been one in the form of the medical reports. However, given the fact that there were conflicting results for the medical examinations, carried out, it was not open to the Court to find corroborative evidence in the medical reports. The private clinic report indicated that the complainant had suffered from a sexually transmitted disease, syphilis. However, subsequent medical reports from the Queen Elizabeth Central Hospital, upon the examination of both the complainant and the appellant, clearly indicated that the appellant was not suffering from any sexually transmitted disease and that the complainant was not then suffering from a sexually transmitted disease.

In the circumstances, there is a reasonable doubt that the appellant might not have had sexual intercourse with the complainant, by reason of which the complainant might have contracted the sexually transmitted disease. To the extent that such was the only basis upon which the allegation of PWI would have been supported on the charge of indecent assault, it would be unsafe to found appellant's conviction on the uncorroborated testimony of PWI.

The doubt must be resolved in favour of the appellant. In the circumstances, the conviction is quashed and the sentence is set aside. It is so ordered.

PRONOUNCED in Open Court this 28th day of September, 2001 at Blantyre.

A. K. Tembo
JUDGE