



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NO. 554 OF 2021

Being Criminal Case Number 554 of 2021, First Grade Magistrate Court Chikwawa

THE REPUBLIC

VS

MADALITSO CHAPEPA.....CONVICT

CORUM: HONOURABLE R.M CHINANGWA

Kulesi	State Advocate
Masowa	Legal Aid Advocate
Chapepa	Convict
Amos	Court Clerk

ORDER ON CONFIRMATION

1. This matter has been set down for consideration of enhancement of sentence.
2. The convict was charged with the offence of defilement contrary to section 138(1) of the Penal Code. The particulars of the offence were that the convict on or about 7th July 2021 at Muonda Village in the District of Chikwawa had carnal knowledge of a girl under the age of 16. Upon hearing the state and defence witnesses the First Grade Magistrate found the convict guilty and sentenced the convict to 14 years imprisonment with hard labour.
3. The brief facts of the matter are taken from the account of the grandmother to the victim who testified that the victim, a 6-year-old girl, went out for celebrations which started on

the 6th of July 2021. The victim arrived home around 6pm. She was crying and refused to eat food. The victim told the mother that she was feeling pain in her private parts and that Peters' father, the convict, had played with her private parts and penetrated her. On being examined, the mother to the victim found her private parts were reddish; there was watery fluids and her underwear was torn. A medical report on record records that the child had a '*whitish greasy fluid on the perineum especially on labia's likely to be sperm*' and the child had no trauma or lacerations.

4. In **Seda v Republic** [1997] 1 MLR 386 (HC) the court held that it is 'not necessary to prove penetration through medical report only'. In this case the girl was the only person present when she was defiled. The mother's examination corroborates the girl's story on her ordeal. In addition, the convicts caution statement records that the convict did meet the girl on the material night. Further, the medical report did confirm the victim's mother's story. These are pointers to the fact that the child's story was true. The identity of the convict was not in question as the victim knew who the perpetrator was. He was Peters father. If for arguments sake the victim got the name wrong, this court is inclined to believe the identity of the perpetrator because the convict after the ordeal is recorded to have taken her home too. The conviction is sustained.
5. At the hearing on enhancement of sentence the State, defence and the convict made submissions. Both the State and the defence argued that the only mitigating factor is that the convict is a first offender. On the other hand, the aggravating factors listed were a plea of not guilty; age of the victim being 6 years old; psychological trauma; the offence was planned; force was used to procure submission; the offence is a serious offence attracting

a maximum sentence of life imprisonment. The accused on the other hand did not raise matters which would inform the court in the matter before it.

6. This court has to determine the appropriate sentence for the convict.
7. In arriving at the appropriate sentence, the court has to examine both the mitigating and aggravating factors. "This will always involve a consideration of the extent and the circumstances in which the crime was committed, the personal circumstances of the defendant, the impact of the crime on the victim and the public's interest in the prevention of crime": **Rep v Nazombe** [1997] 2 MLR 105 (HC).
8. In **Rep v Kampingo and others** [1995] 2 MLR 754 (HC) it was held that courts have discretion in sentencing and are not compelled to impose the maximum penalty. The court in addition held that when sentencing at all times it is important for a court to take into account the trends in the levels of penalties actually imposed.
9. Section 138 (1) of the Penal Code provides that any person who carnally knows any girl under the age of sixteen years shall be guilty of a felony and shall be liable to imprisonment for life.
10. Both the State and the defence have cited several cases showing the sentencing trends. Sentences in defilement cases vary for different reasons namely age difference between the victim and perpetrator; level of trust; number of times the victim was assaulted; impregnation of the victim; transmission of sexual diseases just to mention a few. These considerations come in over and above the fact that defilement causes trauma; is degrading to the victim; is a violation of one's privacy just to mention a few.
11. In **Republic v Petro Billiati** Confirmation Case no. 509 of 2020, Justice Patemba observed that the sentencing trends have scaled upwards following prison statistics which show that

defilement cases have risen following the rise in the number of convicts imprisoned for defilement cases. In the year 2009 to 2020, the number of convicts rose from 183 to 2,155. The courts have recently meted out sentences for defilement offenders whose victims are of tender age to an average of 40 years imprisonment.

12. In **Republic v Afete Daniel** Confirmation Case No. 2123 of 2020, in a decision pronounced in April 2021, a 4-year-old was defiled, the convict's sentence was enhanced from 10 years to 45 years IHL. In the Billiat case the convict was sentenced to 40 years imprisonment.
13. In this case the victim is 6 years old and the convict is 35 years old. It is an imaginable act and very difficult to comprehend. All one can see is wickedness and moral decadence in society. Persons who are supposed to be parents and pillars of hope for the next generation are putting children in harm's way. It is high time that children should be informed in homes; communities and schools about the evils that could befall them in this century. This case could have been avoided if the child was under the care of the parent and not allowed to stay out at night. The State with limited resources can only do so much. Concerted efforts at all fronts are needed to curb this evil.
14. This court finds that the aggravating factors outweigh the mitigating factors. This court finds that a sentence of 40 years is appropriate.
15. The convict has liberty to appeal against both conviction and sentence.

Pronounced this 6 day of December 2022 at BLANTYRE

R.M CHINANGWA

JUDGE