



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CONFIRMATION CASE NO. 601 OF 2021

(Being Criminal Case No. 878 of 2021 before the Senior Resident Magistrate Court sitting at Blantyre)

THE REPUBLIC

V

DICKSON CHITSULO

Coram: Justice Vikochi Chima

Ms Kumwenda, Senior State Advocate

Mrs Kasambara, Senior Legal Aid Advocate

Mrs Moyo, Court Clerk

ORDER IN CONFIRMATION

Chima J

1. Dickson Chitsulo, a 27 year old man, was convicted of the defilement contrary to section 138 (1) of the Penal Code. The convict had sexual intercourse with the 15 year old complainant. According to the girl's testimony, their relationship started in November 2020. On 11 August 2021, while the girl was coming from Zingwangwa and was on her way to some place, she met the convict who was driving a minibus. The convict told the girl to board the minibus and to get off on their return. The two went to Mpemba and returned to Zingwangwa around 6 p.m. The convict asked for sexual intercourse. She told him they could have it the following day. He insisted they have it that day and that he would only let her go after the act. He took her to his house where she spent a night with him and the two had sexual intercourse. The following day, the convict told her that he would drop her off that evening. The whole day, the girl travelled with the convict in his minibus. When evening came, the convict told her that he would drop her off the following

day and so she spent another night with the convict. She spent five days and nights with the convict but they did not have sexual intercourse on each of those nights. Her mother came to the house looking for her and knocked at the door of the convict's house. The convict was away at the time. The girl did not open even though her mother knocked on the door for some time. It was the landlord who confirmed that the girl was inside the house and broke the door. The girl was discovered to be inside.

2. These facts also bring out the offence of abduction contrary to section 136 of the Penal Code. Abduction under section 136 of the Penal Code is a misdemeanour, so that could be the reason the prosecution only opted to charge him with the felony of defilement. Still it would be necessary to charge an accused with all the relevant offences.
3. Looking at the present case, the convict had sexual intercourse with the girl on a number of occasions. It would also have been necessary to charge the different occasions as separate counts rather than just a single count. He pleaded guilty after the girl and the girl's mother had already testified. This plea of guilt came at a late hour when he had already wasted the court's time. Nonetheless it was a plea of guilt—it took away the need for the court to hear the defence testimony. He is twenty-seven years of age thus he is not that young. The girl is aged 15 years. The convict being an adult ought to know that girls of this age are immature and not to be in a sexual relationships and not even to be exposed to sexual behaviour of any kind. They must concentrate on their education. The convict is a first offender. Under the circumstances, I find no fault with the sentence of eleven years imprisonment and I confirm it.

Made in open court this day the

26th

of April 2022

V. Chima

Chima J