



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CONFIRMATION CASE NO. 920 OF 2021

(Being Criminal Case No. 612 of 2021 before the Senior Resident Magistrate Court sitting at Mulanje)

THE REPUBLIC

V

BILLY CHAKUKUMA

Coram: Justice Vikochi Chima

Mr Mphepo, Senior State Advocate

Mrs Kasambara, Senior Legal Aid Advocate

Mrs Moyo, Court Clerk

ORDER IN CONFIRMATION

Chima J

1. Billy Chakukuma aged 44 years was convicted by the Senior Resident Magistrate Court of defilement contrary to section 138 of the Penal Code after full trial and was sentenced to 21 years' imprisonment with hard labour. He had sexual intercourse with a girl aged nine and is in Standard 3. On review, the sentence was found to be inadequate.
2. The evidence shows that the convict is a stepfather to the girl and that he had been in the habit of defiling the girl. The girl's mother has some mental capability challenges. Her testimony was that she had on a number of occasions complained to the convict to stop abusing the girl but that he would threaten her that he would cease buying *mgaiwa* for the family if he was made to stop. He would leave her on the bed and go to the girl's room to have sexual intercourse with her. It was her testimony that on one occasion, the convict had undressed and told the mother to call the girl for him so that he could have sexual intercourse with her but that she refused to call the girl. On another occasion, the mother came upon the convict as he was defiling her; the convict told his wife to switch off the

lights and let him finish what he was doing. His wife had tried to report the matter to the convict's relatives but that all the relations told her was that that was like the convict.

3. One day a passerby who happened to be near the convict's house heard a girl crying inside the house saying "Adadi ndatopa". She went to the house and met the girl's mother. She asked her what was going on. The mother replied that the convict was defiling the girl. The enquirer went inside the house and found the convict on top of the girl having sexual intercourse with her. When she asked the convict what this was all about, the convict simply went off of the girl. It was this lady who reported the matter to Yoneco and later took the girl to the hospital.
4. In *Fabiano Maliko v Rep*,¹ where the appellant who had defiled multiple times a girl of like age as in the present case, was sentenced, by the trial court, to 14 years' imprisonment with hard labour, appealed to the High Court against the sentence. The appellant was a friend to the girl's father and the girl was calling the appellant "uncle". The girl's father would now and then entrust the appellant with the task of dropping the girl at or picking her from school. On some of those trips, the appellant would divert to his house with the complainant where he would have sexual intercourse with her. On appeal, the court found the sentence to be manifestly inadequate and enhanced the sentence of fourteen years' imprisonment with hard labour to that of 40 years' imprisonment with hard labour. Kapindu J. said this:

This is a very sad case of defilement. It is very heartbreaking. A grown man in his forties sexually abused and violated a young girl of ten years of age multiple times. These offences are grisly. They shock society to the core and make us all cringe... The court cannot imagine the excruciating, piercing pain experienced by the little child. The experience must have been so sordid for her. It is a heartrending thought to consider her dreadful torment and ordeal. The court cannot imagine the degree of confusion—both current and future on the little child. The court cannot imagine the psychological trauma or injury—both present and future on this little child. Offences such as this one are likely to have lasting devastating effects on the victim child. The child, in addition to the pain and confusion arising from the sexual abuse, may have growing feelings of shame as she grows, and she may also become deeply distrustful of others.

Further to this, the court cannot imagine the trauma and psychological pain, both present and future on the little girl's parents and loved ones. They are all victims of the appellant's grisly crime.

And the court cannot also sufficiently imagine the odiousness and perverseness of such a grown man deriving sexual pleasure out of violating a little child whose safety he was supposed to be safeguarding. His conduct was so vile, so revolting, so ignominious, so debased and so degenerate.

5. The above sentiments resonate with this court. The convict was taking advantage of a helpless girl and a destitute mother with mental challenges. He became the predator to someone he was supposed to protect and provide for. He was even flaunting the abuse before the girl's mother with no shame whatsoever. The girl is very young. The abuse took place for quite a period of time. According to the girl's recollection, the convict had had sexual intercourse with her on at least three occasions. This court bemoans the fact that prosecutors do not charge accused persons with more than one count of the offence where there have been a number of instances of the commission of the offence. Her cry which was

¹ Criminal Appeal Cause Number 13 of 2020

heard by a passerby shows the girl's desperation and anguish. On medical examination, the girl was found to have bruises in her private parts. One cannot imagine the mental scars that have been etched on that young mind. Defilement in itself is a very serious offence having a maximum sentence of life imprisonment. The conviction came after a full trial and the convict has showed no remorse for his conduct. He is a first offender. Nonetheless, in the face of his beastly behaviour, his lack of criminal record does not yield much in terms of mitigation such that the sentence of 21 years imprisonment with hard labour does not do enough justice. I set it aside and I impose a sentence of 40 years imprisonment with hard labour in its stead.

Made in open court this day the 18th of May 2022


Chima J

