

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CONFIRMATION CASE NO. 769 OF 2020

(Being Criminal Case No. 83 of 2020 before the First Grade Magistrate Court Sitting at Nsanje)

THE REPUBLIC

V

TCHANGIZA STANFORD NSITU

Coram: Justice Vikochi Chima

Ms Layna Kulesi, Senior State Advocate

Ms Sigele Chirwa, Principal Legal Aid Advocate

Mrs Moyo, Court Clerk

ORDER ON CONFIRMATION

Chima J

The accused was convicted, after a full trial, of rape contrary to section 133 of the Penal Code. He was sentenced to three years imprisonment with hard labour. He was 25 years of age when he committed the offence. The complainant had been at a bar that night. She then left for her home on a taxi motorcycle. When she got home, she realised she had left her handbag at the bar. She then hopped on the same motorcycle and returned to the bar. At the bar, the accused told her that it was her friend Doreen who had taken her handbag and offered to lead her to Doreen's house. The accused, the complainant and the motorcycle operator looked for Doreen in different places but they did not find her. Finally, the accused led them to a bar which was near his house. There he produced a knife and threatened the motorcycle operator away. When he remained with the complainant, he threatened her with the knife as well into submitting to her having sexual intercourse with him against her consent. In *R v Ball*¹ the court stated that:

¹ 35 Cr. App. R. 164 at 165

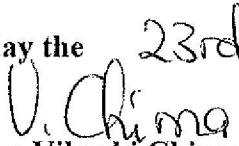
'In deciding the appropriate sentence a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it.'

Lord Lane CJ stated in *R v Roberts*,² which was quoted with approval in *Rep v Msowoya*³ that:

'Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence...A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Second, to emphasise public disapproval. Third, to serve as a warning to others. Fourth, to punish the offender, and last, but by no means least, to protect women. The length of the sentence will depend on all the circumstances. That is a trite observation, but these in cases of rape vary widely from case to case. Some of the features which may aggravate the crime are as follows. Where a gun or a knife or some other weapon has been used to frighten or injure the victim. Where the victim sustains serious injury (whether that is mental or physical). Where violence is used over and above the violence necessarily involved in the act itself. Where there are threats of a brutal kind. Where the victim has been subjected to further sexual indignities or perversions. Where the victim is very young or elderly. Where the offender is in a position of trust. Where the offender has intruded into the victim's home. Where the victim has been deprived of her liberty for a period of time. Where the rape, or succession of rapes, is carried out by a group of men. Where the offender has committed a series of rapes on different women, or indeed on the same woman.'

It was stated by Skinner CJ that "the court does not alter a sentence on the ground that it would have imposed a somewhat different sentence itself. The sentence must be manifestly excessive in view of all the circumstances of the case, or it must be wrong in principle before [it] will intervene."⁴ Rape indeed is a very serious offence as shown by the maximum sentence which is death or life imprisonment. The accused threatened to use the knife against her. The conviction came after a full trial. In his favour, is the fact that he is a first offender and that he was a young man aged 25 at the time of the offence. Nonetheless, the sentence of three years is manifestly inadequate considering the gravity of the offence and its circumstances. It is enhanced to 12 years imprisonment with hard labour.

Made in open court this day the 23rd of August 2021


Justice Vikochi Chima

² [1982] 1 ALL ER 609

³ 12 MLR 394

⁴ *Ali Mahomed v Rep* [1971-72] ALR Mal 16 at 17 para 40