



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CRIMINAL DIVISION**

**CONFIRMATION CASE NO. 511 OF 2020**

**(Being Criminal Case No 67 of 2020 in the First Grade Magistrate Court sitting at Chikwawa)**

**THE REPUBLIC**

**-V-**

**GOODSON BANDECHA**

**CORAM: HON. JUSTICE AGNES PATEMBA**

Mr. Salamba, Counsel for the State

Mr. Panyanja, Counsel for the Accused

Mrs. Msimuko, Court Reporter

Mr Amos, Official Interpreter

**ORDER ON CONFIRMATION**

1. Goodson Bandecha, aged forty-four, from Wizalamu village, Traditional Authority Mphuka in Thyolo district was convicted by a First Grade Magistrate on the count of defilement contrary to section 138 (1) of the Penal Code.
2. The brief facts of the case are that on the 12<sup>th</sup> April 2020 at Kasokeza village in the district of Chikwawa, the convict who is a herbalist had carnal knowledge of a girl aged thirteen. He pleaded not guilty to the charge and after full trial he was convicted and sentenced to 11 years IHL.
3. Upon review, the reviewing judge was of the considered view that the sentence imposed by the lower court was on a lower side and ordered that the matter be set down to consider enhancement of the sentence.

4. The evidence adduced in the lower court reveals that PW1, the victim aged thirteen was staying with her grandmother. The Convict after treating the grandmother of the victim who was sick, he asked to treat the three girls at her house. The convict treated the other two girls as well. When it was the turn of the victim, the victim asked her to take off her clothes which she complied because he wanted to cut her tattoos. He then asked her to lie down to which she resisted. The Convict threatened the victim that if she refuses to comply she will run mad. The victim being afraid of running mad she complied and lied down. The Convict then defiled the girl. After defiling her, he left and the victim reported the matter to her grandparents. He was arrested and when brought before the group village he confessed to have undressed her but refused to have defiled her. In cross- examination she said that at first she was afraid to reveal because he had threatened her that she will run mad.
5. PW2, the grandmother of the victim testified that on the 12<sup>th</sup> April 2020 she contacted the convict to treat her because she was sick. He indeed assisted her. Then the convict told her that one of her grandchildren was sick and needed to be treated. The convict accompanied PW2 to her home to treat the alleged sick girl. Thereafter her brother told her that the convict defiled her grandchild. She testified that the victim is aged 13 years.
6. PW3 testified that the victim is her grandchild and is aged is thirteen. He told the court that on the 12<sup>th</sup> April 2020 the accused came at their house with her sister. PW3 told the court that the spirits revealed to him about the sickness of the girls and that he should cut them tattoos. The girls went into the house one by one to be treated by the convict and the victim was the last one to be treated by the convict. The convict left after treating the girls. Thereafter the victim came out of the house crying that she has been defiled by the convict. Pw3 went to the house of the convict to see him but he didn't find him. The following day he was brought before the group village headman where he admitted to have defiled the girl. Thereafter the matter was reported to police.
7. PW4 was the group village headman who testified that the convict confessed that he indeed defiled the girl and he later referred the matter to police.

8. PW5 was Detective Sub inspector Malanda who testified that he received a complainant about defilement on the 12<sup>th</sup> April 2020. He referred the victim aged thirteen to the hospital for medical examination, and he tendered the medical report. Thereafter he cautioned the convict and charged him with an offence of defilement. pacify
9. In defence the convict opted to exercise his right to remain silent and opted not to call any witness. The lower court proceeded to deliver its judgment based on the prosecution evidence and convicted him and sentenced him to 11 years IHL.
10. At the hearing, the State argued that the sentence should be enhanced from 11 years to eighteen years on the basis that this was a planned offence and there was breach of trust that he had with the community being someone who was invited to treat the victim. Counsel argued that the only mitigating factor is that he is the first offender. While defence counsel argued that the court should confirm the sentence of 11 years.
11. 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.*

12. The penalty imposed under this provision shows the seriousness of the offence and as such the court's decisions should reflect this seriousness by imposing meaningful sentences. I agree with my brother Judge Professor Kapindu as stated in the case of **Brian Shaba v. Republic** (Criminal Appeal No. 19 of 2014 where he stated that;

*Defilement is a very serious and heinous offence. It is both carnally and psychologically invasive offence....the maximum sentence was imposed for a specific reason; to show the seriousness, public revulsion and society abhorrence for this kind of offence.*

13. In the case of **Republic v. Bright Jamali** Confirmation Case No 421 of 2013 (HC) ( PR) Mwaungulu J, ( as he then was) laid down important sentencing guidelines in cases of defilement. He stated that;

*The starting point for defilement should, therefore, based on the maximum sentence of life imprisonment, be fourteen years imprisonment. Sentencers at first instance must then scale up and down the starting point to reflect mitigating and aggravating circumstances and that the sentence must fit the offender.*

14. This has been the position of the law for over a decade. I must state that over a decade ago, these offenses were not as rampant as it is in the recent times. Case statistics in Prison Services regarding defilement cases shows that in 2009 they had 183 Convicts of defilement cases in all the prisons in Malawi. In July 2020, the figures have risen to 2,155 Convicts of defilement offences. I must state that the starting point of fourteen years imprisonment in defilement offences has outlived its purpose. This has been the position of the law for too long, it is time we break camp and move forward. The starting point of fourteen years in defilement offences has not sent a message that defilement is a serious offence. The girl child has not been protected. It is high time that the court considers imposing stiffer penalties and move from fourteen years imprisonment as a starting point to twenty years as a starting point in defilement offences, peradventure, a message might be sent to the society that defilement is a serious offence. Keeping such people away from the society for longer periods might help to protect the young girls.

15. In the recent years, the courts have moved forward to impose stiffer penalties in defilement cases, disregarding the principle that the worst offender is yet to come hence the maximum sentence should be reserved for worst offenders. In the case of **Republic v. Aubrey Kalulu**, Criminal Case No. 1503 of 2017 (HC) (LL), a case was referred to the High Court for purposes of sentencing by the Principal Resident Magistrate under section 14 (6) of the Criminal Procedure and Evidence Code. The High Court imposed a life sentence on the Accused person for the offence of defilement. The Court considered among other things that the Convict was the Victims family landlord, that the Accused person was HIV positive and he was aware about his condition, that he was suffering from syphilis and tinea genitals and as a result of the violation of Victim's private parts were corroded and she had difficulties walking. The court considered the young age of the victim at 12 years of age

and that she was a friend to the convict's child or sister. The sentence was delivered in 2020.

16. In the case of *Fabiano Maliko v. Republic*, Criminal Appeal No. 13 of 20 (HC), a 43 year man, who on multiple times defiled a 10 year old girl, had his sentence enhanced from 14 years to 40 years.
17. In the case of *Republic v. Afete Daniel*, Confirmation Case No 2123 of 2020 (HC) (LL), the Convict aged 29 and married defiled a 4-year-old girl. He was sentenced to 14 years IHL. Upon review, Justice Mtalimanja enhanced the sentence from 10 years to 45 years IHL. This was pronounced on the 19<sup>th</sup> April 2021. And in the case of *Zeeshan Jaral Raja v. Republic* Criminal Appeal No. 36 of 2017, the Convict defiled a girl of 15 years old and was sentenced to 16 years by a lower court. On appeal, Justice Kapindu enhanced the sentence from 16 years to 30 years IHL.
18. In the present case the Convict is 44 years old, a very mature person. He abused his position as herbalist to defile the girl. The offence was pre-meditated. The Court should punish such criminal mind and ensure such kind of people are kept away from the society.
19. Having discussed the law and highlighting the recent jurisprudence on the subject matter, the Court therefore enhances the custodial sentence of 11 years to 42 years IHL with effect from the date of arrest.
20. So I order.

Delivered this 14<sup>th</sup> Day of June 2021.



AGNES PATEMBA,  
JUDGE