



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CONFIRMATION CASE NO. 277 OF 2021

(Being Criminal Case No 34 of 2021 in the First Grade Magistrate Court sitting at Chikwawa)

THE REPUBLIC

-v-

GODFREY JULIUS

CORAM: HON. JUSTICE AGNES PATEMBA

Ms. Kulesi, Counsel for the State

Mr. Panyanja, Counsel for the Accused

Ms. Chiusiwa, Court Reporter

Mr Amos, Official Interpreter

ORDER ON CONFIRMATION

1. Godfrey Julius, aged 25, from Matumula village, Traditional Authority Katunga in Chikwawa district was convicted by the 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 11th March 2021 at Semu village in the district of Chikwawa, the convict had carnal knowledge of a girl aged 14. He pleaded not guilty to the charge and after full trial he was convicted and sentenced to 14 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 summarized facts of the case reveal that the victim met with the convict at a stream. The convict stopped to urinate and he queried the girl why was she passing when he was urinating. He grabbed her and produced a knife. He threatened to kill her and then defiled her and left the place. She reported the matter to her mother and the convict was arrested. It is on court record that the convict before the arrest he had dread locks and he only shaved after committing the offence to conceal his identity. However, the girl managed to identify him at the identification parade. The barber man who shaved him testified that the Convict found him on the 13th March the day he was arrested around 3pm and asked him to shave his hair. He indicated that he had no money and will pay him later. Thirty minutes after shaving his hair he heard that the Rasta man had defiled a girl.
5. 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 14 years IHL.
6. At the hearing, the State submitted that the sentence should be enhanced from 14 years to 20 years on the basis that this was a planned offence and the victim was threatened with a knife. While the Defence Counsel submitted that the court should enhance the sentence from 14 to 18 years IHL.
7. 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.

8. 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

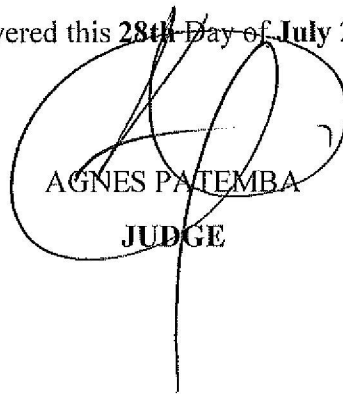
specific reason; to show the seriousness, public revulsion and society abhorrence for this kind of offence.

9. 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 sentenced was delivered in 2020.
10. In the case of ***Republic v. Petro Biliati***, Confirmation Case No. 509 of 20 (HC) (Principal Registry) a 33 year man, defiled a 9 year old girl, had his sentence enhanced from 10 years to 40 years considering his HIV status.
11. 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 19th 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.
12. In the present case the Convict is 25 years old, an adult person. He used a knife to threaten the young girl and forced himself on her. Meaning if the girl decided to refuse his demands he could have killed her as per his indication because the knife was already on the neck of

the girl. He subjected the girl to a life time trauma. The Court should punish such criminal mind and that people like the convict are kept away from the society. I therefore enhance the sentence from 14 years to 35 years IHL with effect from the date of arrest.

13. So I order

Delivered this ~~28th~~ Day of ~~July~~ 2021.



AGNES PATEMBA
JUDGE