



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL DIVISION**

**CONFIRMATION CASE NO. 513 OF 2020**

**(Being Criminal Case No 68 of 2020 in the First Grade Magistrate Court sitting at  
Chikwawa)**

**THE REPUBLIC**

**-V-**

**YAMIKANI BANDA**

**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

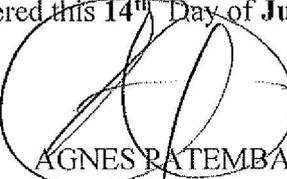
**ORDER ON CONFIRMATION**

1. Yamikani Banda, aged 18, from Mvula village, Traditional Authority Katunga in Chikwawa District was convicted by a First Grade Magistrate on the count of defilement contrary to section 138 (1) of the Penal Code.
2. The summarized evidence adduced in the lower court is to the effect that on the 30<sup>th</sup> March 2020, Miss X aged 13, went to see her mother in another village where she stays. She didn't find her and immediately she returned to the village where she stays with her aunt. On her way back she met the Convict who confronted her that she has been rejecting her friendship and he abducted and locked her in his house. He returned around midnight and defiled her. The following morning, he left for work and locked Miss X in the house. After he returned

from work he started cooking and at this point Miss X found an opportunity to ran away and reported to her mother. They reported the matter to police and she was sent to the hospital for examination and the medical report was tendered in court which revealed that there was suggestive of vaginal penetration.

3. In defence the Convict narrated what the girl had said about her trip to see her mother and that she didn't take long and passed by at the accused place where they had sex. The girl told the victim that she is 17 years old. Two defence witnesses testified to the fact that the Convict and the victim were in a relationship and they have seen them together going to the market and chatting. And the girl told DW3 that she is 17 years old.
4. 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.
5. At the hearing, the State argued that considering that the Convict was a young boy aged 18 and he was in a relationship with the girl aged 13, having in mind the case of *Yamikani Paul* the court should consider confirming the sentence or lower it down. The Defence Counsel urged the court to confirm the sentence of 15months.
6. The Court agreed with the defence that there was a relationship and considering the age gap between the convict and the victim, the Court confirms the sentence of 15 months.
7. So I order.

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

  
AGNES PATEMBA,  
**JUDGE**