



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION

CONFIRMATION CAUSE NO 520 OF 2023

BETWEEN:

THE REPUBLIC

AND

CHARLES SELENJI.....CONVICT

CORUM: HONOURABLE JUSTICE R. M CHINANGWA

Mkuwira	Counsel for the State
Chaoneka	Counsel for the Convict
Amos	Court Clerk

RULING ON CONFIRMATION OF CONVICTION AND SENTENCE

1. The convict was convicted on a plea of guilt for the offence of defilement contrary to section 138 of the Penal Code. The particulars of the charge were that the convict on 20th February 2023 at Machokola Village in Mulanje District, had carnal knowledge of a girl under the age of 16 years old.
2. The facts of the case were that on 20th February 2023 around 16:00 hrs the convict was caught red handed defiling his step daughter an 8 year old girl. He was apprehended and taken to the police where he admitted the offence in his caution statement. The medical report confirmed that the girl was sexually assaulted.
3. The lower court considered the sentencing guidelines, mitigating and aggravating factors to arrive at a sentence of 18 years imprisonment. Regarding the sentencing guidelines, the lower court considered that the sentencing guidelines provide for 14 years as the prison term for defilement offenders. The same could be adjusted upwards or downwards when the mitigating and mitigating factors are weighed in.
4. The mitigating factors before the lower court were that the convict is a first offender, the convict is a young offender at 20 years old and that there was a plea of guilt. This court observes that the lower courts sentence in some parts of the text records that the convict is 45 years old. The convicts caution statement records that the convict was 45 years old. It is this courts view that recording the age of the convict at 20 and making it a consideration in mitigation should have been a clerical error. The aggravating factors that were convicted were that the convict planned the offence; he used force; the minor trusted convict being her step father.

5. On confirmation, the court considers the propriety of the conviction and sentence in exercising its supervisory role on the lower court: see section 15 of the Criminal Procedure and Evidence Code. The conviction was confirmed as the lower court had procedurally followed the procedure on a plea of guilt namely; the elements of the offence were singularly put to the convict to which he admitted; the convict admitted to knowing the consequences of his plea of guilt; the facts were on point having been supported by a medical report and caution statement; the identity of the child was not revealed; the convict admitted that the facts were correct and the conviction was properly entered as it was based on his admission of the elements of the offence and facts.
6. This matter was set down to consider the propriety of the sentence as the sentence of 18 years was considered to be on the lower side considering the current sentencing trends.
7. Both the State and Legal Aid Bureau made submissions on the sentencing trends. The following cases were cited: *Zeeshan Jaral Raja v Republic* Criminal Appeal No. 36 of 2017 (judgement delivered on 8th January 2021) in which a sentence of 16 years was enhanced to 30 years for defilement of a 15 year old girl. In *Republic v Francis Goliati* Confirmation Case 799 of 2022, a 27 year old convict who defiled a 9 year old child had his sentence confirmed at 18 years. In *Republic v Brighton Chimwaza* Confirmation Case No 690 of 2022 a sentence of 14 years was confirmed for the convict who was aged 44 years. In *Maliko v Republic* {2021} MWHC a sentence of 14 years was enhanced to 40 years where the convict aged 43 had defiled a 10 year old girl.
8. As can be noted the sentencing guidelines have changed through case law. The lower court had correctly observed that the plea of guilt and that a convict is a first offender do not add value in defilement cases in order to protect girls in our society.
9. This court is of the view that the sentence of 18 years was on the lower side. The aggravating factors only call for an enhancement.
10. The convicts sentence if enhanced to 25 years for the simple reason that his productive life will be in custody and he will be released at around 70 years of age. Pedophile's deserve long custodial sentences for endangering, taking the life and innocence of young girls. The sentence is to run from the date of arrest.
11. Any aggrieved party has the right to appeal to the Supreme Court within 30 days from date of pronouncement.

Pronounced this 13th day of December 2023 at BLANTYRE


R.M CHINANGWA
JUDGE