



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CRIMINAL APPEAL NO. 54 OF 2016

(Being Criminal Case No. 279 of 2015 before The First Grade Magistrate Court at Mponela)

BETWEEN:

DERICK SOKO.....APPELLANT

-AND-

THE STATE.....RESPONDENT

Coram: **Honourable Justice Dr. C.J. Kachale, Judge**
Appellant, Present and represented by
Dzonzi, of Counsel
Gondwe, Senior State Advocate for the Respondent
Jere (Mrs.), Court Reporter
Choso, Court Clerk

JUDGMENT

1. On 29th February 2016 the First Grade Magistrate at Mponela convicted *Derik Soko* of the offence of defilement and subsequently sentenced him to 8 years imprisonment (as well as imposed an order for compensation

amounting to K50, 000). *Derik Soko* now appeals against both his conviction and sentence.

2. According to the Grounds of Appeal filed in support the appellant has raised three issues:
 - I. The medical report tendered in court does not show any evidence as there were no wound or bruises seen. The medical report tendered in court actually says “difficult to ascertain defilement as per stated date.” One wonders how the magistrate could find a case of defilement when the medical report says otherwise.
 - II. Apart from the evidence of the so-called victim of the defilement [there] was no witness from the State to corroborate this. All the people alleged to have been at the house on the material time were not called to give independent evidence.
 - III. That I am just implicated in this case because of personal hatred among parents back home as we are related to one another.
3. In summary, there are serious questions being raised about the adequacy of the evidence relied upon at trial and the manner in which the trial court treated the same in its decision. Very elaborate arguments have been presented to support this appeal. In response the state has pointed out that in law there is nothing to stop the court finding a person guilty on the basis of uncorroborated evidence of a victim of sexual crime; the cases of **Mabvuto Wesley-v-The Rep**, Crim. Appeal No. 1137 of 1995 (unreported).
4. In deciding this appeal my court has been mindful of the extensive mandate it enjoys on appeal: Thus in **Pryce-v-Rep** [1971-72] ALR (M) 65 it was emphasized that an appellate court is entitled to undertake a fresh review of the evidence and arrive at its own conclusions, independent of those at trial. In doing so the appellate court does not disregard the decision of the trial court; rather it considers it carefully without shrinking from overruling it where appropriate. Thus this court is prepared to depart from the decision and conclusions of the lower court where it is found that the magistrate’s conclusions were not substantiated by the evidence or disregarded some critical evidence.

5. Furthermore the decision of Cram, J in **Useni-v-Rep** [1964-66] ALR (M) 250 outlines in some detail the judicial role of the trial magistrate to evaluate evidence, to determine credibility and admissibility questions, to apply correct legal standard and burden of proof principles in assessing the evidence and generally to justify his decision in law. Thus in dealing with the appeal this court has also considered whether the lower court properly exercised its judicial responsibility.
6. Without having to reproduce the record of evidence at trial as well as the judgment of the magistrate, my court has reached the conclusion that the present appeal is unsafe and will accordingly reverse it on appeal. In the first place, this court finds that the magistrate failed in his duty to consider the totality of the evidence in determining whether or not the appellant's guilt had been proven beyond a reasonable doubt. For example, as has been pointed out in the first ground of appeal, the medical report stated that there were no wounds or bruises in the child's genitalia: when that evidence is read alongside the testimony of the mother who asserted that her daughter had injuries and was having difficulty in walking it is clear the two scenarios cannot be true at once. This raises serious credibility issues about the mother.
7. In addition, the trial court seems to have completely ignored the caution statement which offered some exculpatory evidence in favour of the appellant in that he clearly denied the charge and even raised the defence of alibi. Indeed at trial he produced a witness to confirm his alibi; without the state in any way challenging that line of defence the magistrate simply concluded that appellant must have defiled the girl. It would seem that the magistrate failed to consider all the evidence together in order to determine whether the charge had been established beyond a reasonable doubt. In that respect, it is quite significant to observe that none of the persons who could have easily corroborated the child's story were ever summoned to testify; while her evidence does not require corroboration as a matter of law, in this instance the court is duty-bound to apply the rules of evidence in a balanced manner and ensure that the state properly discharges its burden of proof to the required standard.

8. In this respect the court concludes that the appellant (at trial) raised sufficient grounds to create some reasonable doubt about the veracity of the allegation which he was facing at trial. According to the independent analysis of the evidence undertaken on appeal, the present conviction for defilement is rather unsafe. It is worth recognizing that the child only acknowledged the incident after her brother had beaten her up; by then five days had gone from the day of the alleged defilement which meant there it was difficult to obtain medical proof. However the available medical evidence in fact contradicted the suggestion from a key state witness concerning the nature and extent of injuries purportedly suffered by the child. These are matters which do not seem to have exercised the mind of the lower court at all; yet they seriously challenge the reliability of the case of the state.
9. On all these premises, therefore, this court grants the appeal of *Derik Soko* against his conviction for defilement as well as the sentence therefor. Accordingly the court hereby sets aside the conviction of *Derik Soko* for defilement contrary to section 138(1) of the Penal Code; the corresponding sentence of eight (8) years imprisonment is hereby quashed.
10. Furthermore the order of compensation for K50, 000 is set aside; any money paid in performance of that order must duly be refunded to the appellant.

Made at Lilongwe this 23rd day of August 2016 at Lilongwe.

C.J.Kachale, PhD
JUDGE