

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NO. 1215 OF 1995

THE REPUBLIC

VERSUS

MPOMBA EPHRAIM MANTHENGA

From the Second Grade Magistrate's Court at Bangula Criminal Case No. 231 of 1995

CORAM: MWAUNGULU, J

Mwenelupembe, Principal State Advocate, for the State

Accused, present and unrepresented

Mthukane, Official Interpreter

Mwenyeidi, Recording Officer

Mwaungulu, J

JUDGMENT

The Judge who reviewed this matter set it down to consider the severity of the sentence. The defendant, Mpomba Ephraim, was convicted by the Second Grade Magistrate for the offence of rape contrary to section 133 of the Penal Code. The Court sentenced the defendant to five years imprisonment with hard labour. The sentencing Court gave no reasons for the sentence imposed. The Principal State Advocate, Mr. Mwenelupembe, supports the sentence. The question for me is whether this sentence should be confirmed. Yes, and for many reasons apart from the fact that, if anything, the sentence should have been much higher.

The complainant, Liness Phaya, was in the company of her husband when what happened. When going to their garden the complainant and her husband met the defendant and his group. The defendant and his group chased the complainant's husband. The defendant had a gun. At a gunpoint he asked the complainant to lie down. The defendant had sexual intercourse with the complainant. After that he assaulted the complainant.

The complainant ran to the police. The defendant was arrested later. He admitted the charge at the police. He pleaded guilty when he appeared before the Second Grade Magistrate. The sentence imposed was five years imprisonment with hard labour. No reasons were given for the sentence.

It behoves every sentencer to explain how a particular sentence has been arrived. There are reasons for this. The defendant is entitled to know why and how that sentence has been arrived at. The Criminal Law is enforced through public funds to curb crime. It is in the public interest to know the approach of the Courts, not only for preventing crime, but to ensure that the public can perceive that the sentencing approach achieves proportionality and equality. More practically, the sentence imposed in a particular case is discretionary. The Court on appeal or review will consider the principles and the factors taken into account by the sentencing Court.

The case here, however, posed more for severity. As far as the record goes, only three factors were in favour of the defendant; his age, he is twenty years, he is a first offender and, more importantly, he pleaded guilty to the charge. In relation to the age, it is becoming very apparent now that in this country it is this age group which is responsible for most atrocious and dastard crimes. While Courts readily accord clemency because of the youthfulness of an offender, a point is reached, either because of crime trends or the circumstances in which the offence is committed, when age considerations have to give way to the more compelling demands of criminal policy, the protection of society. The same goes for the fact that the defendant is coming to a life of crime for the first time. This Court has stressed for a long time now that pleas of guilty should be matched with a modest reduction in sentences. Such pleas reduce time, cost and space deficiencies and enable these utilities to be more available for needy cases. There are bound to be cases, however, where such a plea does not avail much. Here this is the only reason why the sentence should be confirmed.

The sentence will be confirmed because of considering the plea of guilty. It can be assumed that the reduction has been taken into account for the circumstances in which the offence was committed justified a heavier sentence. Husband and wife were put to much shame and humiliation. The complainant is married. She was put to much fear by the gun and the group that swooped on her. The defendant was armed. The crime was committed in concert with others. All these factors, although not raised by the sentencing Court, must be ones that actuated the sentencing Court. .

Made in open Court this 25th day of January 1996 at Blantyre.

D.F. Mwaungulu
JUDGE