

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT KABWE
(Criminal Jurisdiction)

APPEAL NO. 19/2019



BETWEEN:

CHRISPINE CHISANGA

APPELLANT

AND

THE PEOPLE

RESPONDENT

Coram: Muyovwe, Hamaundu and Chinyama, JJS
On the 13th August, 2019 and 19th August, 2019

For the Appellant: Mr. K. Katazo, Senior Legal Aid Counsel

For the Respondent: Mr. C. Bako, Deputy Chief State Advocate

J U D G M E N T

MUYOVWE, JS, delivered the Judgment of the Court.

Cases referred to:

- 1. Jutronich and Others vs. The People (1965) Z.R. 9**
- 2. Greyson Mwale vs. The People Appeal No. 58/2011**
- 3. Gideon Hammond Millard vs. The People (1998) Z.R. 52**
- 4. Sikaonga vs. The People (2009) Z.R. 192**
- 5. Muyoka vs. The People (1986) Z.R. 43**

This is an appeal against sentence only. The appellant was convicted of the offence of defilement by the Subordinate Court sitting at Kasama.

The facts established by the prosecution were that the appellant's wife who is the mother to the 14-year-old prosecutrix left for Lusaka, leaving the children who included the prosecutrix in the appellant's custody. While she was away, PW2 a cousin to the prosecutrix suspected that the appellant was sexually abusing the child. She observed on two occasions the prosecutrix coming out of the house looking distraught and each time the appellant would then also emerge from the house indicating that the two had been together in the house. Yet on both occasions, when she knocked on the door, there was no response. When the aunt to the prosecutrix arrived to fetch the prosecutrix to take her to her biological father, PW2 confided in her about her suspicions. On questioning the prosecutrix, she admitted that the appellant had defiled her on three occasions. She was taken to the clinic for medical examination which confirmed that she had been defiled and the appellant was apprehended and charged with the subject offence.

The appellant's defence was that PW2 fabricated the whole story.

The matter was sent to the High Court for sentence. The sentencing judge imposed a sentence of 45 years imprisonment with hard labour.

The appellant being aggrieved by the sentence appealed to this court. In his sole ground of appeal Mr. Katazo Learned Counsel for the appellant argued that the sentence of 45 years is excessive for a first offender. Relying on the case of **Jutronich and Others vs. The People**,¹ Counsel contended that this was a borderline case in that the prosecutrix was 14 years at the time of commission of the offence. Although this was a case involving a stepfather abusing the stepdaughter, Counsel urged us to interfere with the sentence, in terms of the principles of sentencing laid down in the case of **Jutronich**.¹ However, Counsel conceded that there are aggravating circumstances in this case and left the issue of sentence in our discretion.

In response, Mr. Bako the learned Deputy Chief State Advocate submitted that the sentence should not come to us with a sense of shock having regard to the circumstances of this case. Mr. Bako submitted that there are aggravating circumstances in this case namely: the age of the prosecutrix; she was the appellant's

step-daughter; she was repeatedly defiled; she got infected with a sexually transmitted disease and the ordeal took place at home – which was supposed to be a safe place. Counsel pointed out that clearly the prosecutrix had nowhere to run to. Mr. Bako buttressed his submission by relying on the case of **Greyson Mwale vs. The People**² in which we refused to interfere with the sentence of 30 years imposed by the sentencing court for defilement of a 14 year old girl. Mr. Bako urged us to reject the appellants plea for a lower sentence in view of the circumstances of this case.

We have considered the arguments by Counsel for the parties. Mr. Katazo made a plea on behalf of his client that despite the presence of aggravating circumstances, the sentence of 45 years is in his view manifestly excessive for a first offender.

We totally agree with Mr. Katazo that the appellant as a first offender deserves leniency. However, Counsel has graciously conceded that in sentencing the appellant, the sentencing court was on firm ground when it considered the glaring aggravating circumstances in this case which Mr. Bako clearly outlined. This court has held in a plethora of cases such as **Gideon Hammond Millard vs. The People**³ and the earlier case of **Jutronich** that as

an appellate court, when called upon to interfere with a sentence imposed by the lower court, we should ask ourselves the following questions:

- (1) Is the sentence wrong in principle?
- (2) Is the sentence so manifestly excessive as to induce a sense of shock?
- (3) Are there exceptional circumstances which would render it an injustice if the sentence was not reduced?

The aggravating circumstances take this case out of the realm of the minimum sentence of 15 years for defilement. In the case of **Greyson Mwale**² cited by Mr. Bako and which was delivered by this court on the 4th February, 2014 the prosecutrix was 14 years old. In that case, the appellant repeatedly defiled the child who was intoxicated and had passed out after being given kachasu (an illicit brew) by the appellant. This court refused to interfere with the sentence of 30 years and we held, taking into account decided authorities such as **Sikaonga vs. The People**⁴; **Muyoka vs. The People**⁵ that:

Considering that this offence carries a maximum sentence of life imprisonment, the sentence of 30 years is not excessive taking into

account the age of the victim and all the prevailing circumstances of the case. It therefore does not come to us with a sense of shock.

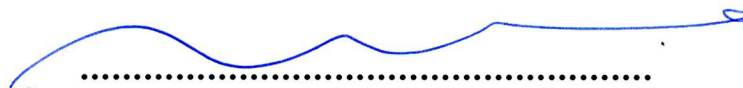
In this case, as observed by the sentencing judge, the appellant as a parent betrayed his wife's trust as well as that of the prosecutrix. Instead of protecting her, he abused her having threatened her with death. He saw an opportunity and took advantage of the child while his wife was away. In our society, the child was and is perceived as his daughter and it is forbidden for him to have sexual relations with her. As pointed out by Mr. Bako, her home was no longer a safe place. We cannot ignore that in Zambia, defilement has become endemic. Children are not safe even at home, hence the stiff penalties imposed by lower courts to send a message to would-be offenders.

Looking at the circumstances of this case, the sentence is not wrong in principle, it has not come to us with a sense of shock and there are no exceptional circumstances which would render it an injustice if we do not reduce the sentence. This is a scourge, a monster bent on destroying our society and anyone found wanting should face the wrath of the law. As we reminded Counsel for the appellant, the maximum sentence for defilement is life. And we

have emphasized in a plethora of cases that when imposing sentence, each case must be dealt with on its peculiar facts.

For reasons given herein, the appeal against sentence collapses. We uphold the sentence of the lower court.

Appeal dismissed.



E.N.C. MUYOVWE
SUPREME COURT JUDGE



E.M. HAMAUNDU
SUPREME COURT JUDGE



J. CHINYAMA
SUPREME COURT JUDGE