

Republic v Cidreck
1995 MLR 695 (High Court of Malawi 1994)

The case deals with the enhancement of rape sentences in the context of the HIV epidemic in Malawi. The Malawi High Court rejected the argument that rape sentences should be enhanced on the sole basis of the current HIV epidemic. The court held that rape sentences should only be enhanced if there is proof that the victim has thereby contracted HIV or that the rapist is HIV-positive.

Excerpts

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Introduction

The accused was charged with rape contrary to section 1333 of the Penal Code and was sentenced to 18 months' imprisonment with hard labour. The case has been set down to consider enhancing sentence which appears to be inordinately low.

Facts

The accused was 18 years and the victim was 16 years at the material time. These two youngsters were pupils at the same school. On 24 August 1994 the victim had gone to visit a friend and on her way back she saw the accused running after her. He grabbed and pulled her down to the ground and forcibly had sexual intercourse with her. After satisfying his sexual lust he ran away. The victim reported the matter to her grandmother and eventually to the police. The accused was arrested. His evidence was that he had sexual intercourse with the victim with her consent. He alleges that they were lovers. The lower court rejected his evidence. There was ample evidence that that sexual intercourse was done against the wishes of the victim....

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Mr Assani submitted that the offence is serious especially that the dignity of the woman was being interfered with without her consent. Furthermore, that the AIDS scourge put the victims of such offences at risk. He referred the court to the cases of *Rep v Jackson* Conf Case No 116 of 1994 (unreported) where a sentence of two years was enhanced to four years' imprisonment with hard labour and *Rep v Machilika* Conf Case No 736 of 1992 (unreported) where both the accused and victim were pupils and 24 months' imprisonment with hard labour was confirmed.

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Finding

I agree that the offence which the accused committed is very serious. Society requires protection of the law through a meaningful penal process in our courts. Therefore there is real need to meet our appropriate sentences. The sentence of 18 months does not sufficiently punish the accused although he is a first offender. He must learn and appreciate that what he did was wrong so that in future he shall refrain from such mischief. The argument that the sentence should be enhanced because there is now the AIDS epidemic in our society is unacceptable. The position has been clearly put in several local cases that the sentence should be enhanced if there is proof that the victim has thereby contracted the virus which causes the disease or that the rapist is HIV positive. No such evidence is available here.

Remedy

The aggravating factors outweigh the mitigating factors. Consequently I set aside the sentence of 18 months' imprisonment with hard labour and in its place impose a stiffer sentence of 36 months' imprisonment with hard labour.