



Court charges a man with aggravated defilement

The trial judge considered the fact that the convict was a first offender and sought forgiveness, meaning, he must have reflected on his crime and, therefore, spoke from a contrite heart. He was capable of reforming.

BY SYLVESTER ONZIVUA

On April 10, 2025, a 38 year old man, nicknamed Bombay, was convicted of aggravated defilement by the High Court. The incident complained of occurred on January 28, 2018, when Bombay, then 32 years old, ambushed two girls, who were harvesting cassava, and caught one of them and forcefully defiled her. The girl was only 13 years old. That day Bombay was arrested and subsequently arraigned in court and charged with aggravated defilement.

Performing a sexual act with a person below the age of 14 years, at the time

of the sexual act, is one of the forms of aggravated defilement. However, even if the victim is above 14 years but below 18 years, the offence is still aggravated defilement if the perpetrator tests positive for the Human Immune Deficiency Virus (HIV), or is a person of authority over the victim, or if the victim is physically or mentally impaired or if the perpetrator has had a previous conviction for a sexual offence.

It was proved to court's satisfaction that the victim was, indeed, only 13 years old and in Primary 3 at the time of the incidence. Court relied on the girl's evidence and that of her mother and the medical evidence adduced to establish that the victim was below 14

years. The evidence of the girl and that of her cousin were vital in proving that a sexual act took place.

This evidence was corroborated by the medical evidence, the behavior of the girl soon after the act and the testimony of her mother. The perpetrator was positively identified by the two girls and court observed that there was no reason or motive for the two girls to make such a serious allegation against Bombay.

Prosecution asked for a 30-year sentence for the convict and the reasons submitted were that the offence of aggravated defilement was rampant and that had led to a public outcry; that the offence had left the victim with physical, emotional and psychological trauma. Further, the perpetrator acted with impunity as the offence was committed in broad daylight and it took the intervention of a third party to rescue the victim from further sexual assault.

A lawyer holding State brief and acting for the accused proposed an imprisonment for 15 years. The lawyer submitted that the convict was remorseful and sought forgiveness from the victim, the victim's family and the nation.

The lawyer further submitted that the convict was a first offender and was only 38 years of age and was likely to reform and that he was the sole bread winner for his family. It was also pointed out the convict had been on remand for seven years, one month and 20 days.

Court noted that the maximum sentence for aggravated defilement is the

death sentence. However, according to the Constitution, the death sentence is reserved for cases that fall in the category of 'the rarest of the rare'. In this particular case, neither of the Counsels asked for the death penalty or life imprisonment, which is the second heaviest punishment. Only prison terms were proposed and counter proposed.

In sentencing a convict, court is guided by past sentences in cases bearing similar resemblance. In a previous case, the Court of Appeal upheld a sentence of 17 years' imprisonment imposed by the High Court where the convict, a 30-year-old man, defiled a 5-year-old girl. In another case the Court of Appeal set aside the sentence of 30 years' imprisonment imposed on the convict and substituted it with a sentence of 15 years for aggravated defilement.

In yet another case, the Supreme Court upheld a sentence of 14 years' imprisonment for aggravated defilement imposed by the trial court and upheld on first appeal by the Court of Appeal. In this particular case the victim was 14 years old. And in another case a man who defiled an 8-year old girl was sentenced to 16 years imprisonment and this sentence was upheld on appeal.

The trial court, in the instant case, noted that the Court of Appeal, in the immediate past, had been imposing higher sentences for cases of similar nature as that before it. On 11th March 2025, the Court of Appeal upheld a 25 years' imprisonment handed by the

trial court where the appellant defiled a 9-year girl.

The Court had previously upheld a 30-years' imprisonment for the aggravated defilement of a 10-year-old girl and in another case upheld a 32 years' imprisonment for the aggravated defilement of a 12 year old girl. The Court even upheld a 40 years imprisonment for the aggravated defilement of a 12-year-old girl.

The present case court considered the obvious signs of physical injury the girl sustained and the fact that she was forced into the sexual act and defiled during broad daylight and in the full glare of her cousin sister. The girl was only 13 years then and the perpetrator 19 years older, that is, 32 years of age.

Court noted that the offence of aggravated defilement was rampant and only second to murder in the criminal session that was held. The girl was made to swallow, for a whole year, drugs for Post Exposure Prophylaxis (PEP) for the prevention of HIV infection. To court these drugs were not without side effects. Accordingly, the 15 years' imprisonment proposed by the defence counsel and the eight years proposed by the convict himself would be disproportionately low if accepted and were, therefore, rejected by court.

The trial judge, however, considered the fact that the convict was a first offender and sought forgiveness, meaning, he must have reflected on his crime and, therefore, spoke from a contrite heart. He was also a breadwinner and capable of reforming at his age of 38 years.

To court these mitigated the 30 years' imprisonment proposed by the Prosecution. Court, therefore, considered a 19 years' imprisonment an appropriate sentence in the circumstances. Court deducted the period the convict spent on remand and sentenced him to a spend 11 years, 10 months, 10 days imprisonment for aggravated defilement starting from April 10, 2025, the date of conviction.

Aggravated defilement

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