

**IN THE HIGH COURT OF ZAMBIA
HOLDEN AT LUSAKA**
(Criminal Jurisdiction)



HPS/05/2018

THE PEOPLE

V

REAGAN KAMBOYI

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 31st DAY OF
JANUARY, 2018**

For the State : Mr C.K. Sakala, State Advocate, NPA

*For the Convict : Mrs M.Marabesa Mwenya, Legal Aid Counsel, Legal Aid
Board*

R U L I N G

CASES REFERRED TO:

- 1. Nathan Hakagolo V The People SCZ No 7 of 2016**
- 2. Bright Kaweme V The People Appeal No 140/2015**

LEGISLATION REFERRED TO:

- 1. The Penal Code, Chapter 87 of the Laws of Zambia**
- 2. The Criminal Procedure Code, Chapter 88 of the Laws of Zambia**

The convict stood charged with the offence of defilement contrary to section 138 (1) of the Penal Code, Chapter 87 of the Laws of Zambia before the Subordinate Court at Lusaka. The particulars of the offence alleged that the convict on 22nd October, 2016, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia had unlawful

carnal knowledge of Jane Banda, a girl under the age of sixteen years. He was convicted of the offence and committed to the High Court for sentencing on 23rd June, 2017.

When the matter came up for sentencing on 29th January, 2018 before me, the State indicated that they supported the conviction and asked the court to take note of the aggravating circumstances in the matter when sentencing the convict. The aggravating circumstances were named as the convict being in a relationship with the prosecutrix's mother, and thereby having sex with her yet he defiled the prosecutrix. It was submitted that this is a proper case in which the court should met out a deterrent sentence.

However Counsel for the convict submitted that the court should review the correctness of the conviction, as there was no corroboration of the identity of the defiler, and secondly that the motive to falsely implicate the convict was ruled out, and Counsel asked to file written submissions.

The State in reply stated that the powers of review reposed in this court are exercised at the court's instance, and no party can move the court to do so. That when a matter is being reviewed, no submissions are made by a party, unless requested by the court.

I have considered the application. This matter has come before me for sentencing after the Subordinate Court committed the convict for sentencing pursuant to Section 217 of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia, after it convicted him of the offence of defilement. Section 138 (1) of the Penal Code, Chapter 87 of the Laws of Zambia prescribes a minimum mandatory sentence of fifteen years imprisonment for any person convicted of the offence of defilement,

