

Teenager fails to halt his trial in 'Romeo and Juliet' case

By Tim Healy

A TEENAGE boy who had sex with a 14-year-old girl when he was himself only 15 yesterday lost his appeal against being prosecuted in what has been dubbed the 'Romeo and Juliet' case.

A judge dismissed a claim that the teenager, now aged 18, was being discriminated against because he could be prosecuted while the girl could not.

Laws were introduced in 2006 in response to a Supreme Court 'CC case' decision, in which a 1935 law on underage sex had been found to be unconstitutional.

This was because of the absence of a defence that an alleged offender may have made a reasonable mistake as to the victim's age.

The teenage boy in the current case brought a constitutional challenge against the State, claiming that his rights were breached because he had been charged with unlawful carnal knowledge and with committing buggery -- while the girl has not been charged.

The girl, he claimed, could not be found guilty of underage sex under the new law and therefore he was being discriminated against on the grounds of gender.

Yesterday in the High Court, Ms Justice Elizabeth Dunne rejected the teenager's case. She said there was no constitutional frailty in the law under which he was charged, the Criminal Law (Sexual Offences) Act 2006.

The teenager had challenged Section 3 of the Act, which created an offence of defilement of a child under 17 and carries a sentence of up to five years' imprisonment.

He had linked that challenge to Section 5 of the Act, which states that a girl under 17 cannot be guilty of such an offence.

The judge said this provided for different treatment of boys and girls and as such it had to be viewed as being discriminatory on grounds of gender.

There was, however, case law which legitimised such discrimination if it was founded on difference in capacity or social function of men and women, once it was not invidious, arbitrary or capricious.

The objective of the 2006 Act was to protect children from sexual abuse, said the judge, and it dealt with a wide range of sexual activities, circumstances and levels of culpability.

Immunity

It provided, however, that immunity from prosecution applied to the one area of sexual activity that could result in pregnancy and the consequence was that it carried no risk for boys or men -- that risk was only borne by girls, she said.

A study referred to during the case showed that the younger the age at which sexual intercourse takes place, the greater the probability of a negative outcome, such as unintended pregnancy, she said.

A stay on the teenager's trial, pending the outcome of the High Court challenge, will remain in place until next month in order to allow his lawyers consider the judgment.

Tim Healy

Irish Independent